

1
2 SUPERIOR COURT OF THE STATE OF CALIFORNIA
3 FOR THE COUNTY OF SAN DIEGO

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5 COORDINATION PROCEEDING) JCCP No. 4042
6 SPECIAL TITLE (Rule 1550 (b)))

7 In re TOBACCO CASES II)

8 This document relates to:)

9 The People of the State of)
10 California, et al. v. Philip)
11 Morris Incorporated, et al.,)
12 Los Angeles Superior Court Case)
13 No. BC 194217;)

14 The People of the State of)
15 California, et al., v. General)
16 Cigar Co., et al., San Francisco)
17 Superior Court Case No. 996780;)

18 The People of the State of)
19 California, et al., v. Brown &)
20 Williamson Tobacco Corp., et al.,)
21 San Francisco Superior Court)
22 Case No. 996781;)

23 The People of the State of)
24 California, et al. v. Tobacco)
25 Exporters, et al., San Francisco)
26 Superior Court Case No. 301631.)

27 DEPOSITION OF
28 ANDREW M. WEISSER

June 7, 2000

REPORTED BY: CLARE MACY, CSR 5256

I N D E X

INDEX OF EXAMINATIONS

EXAMINATION BY MR. LERNER 6

EXHIBITS MARKED FOR IDENTIFICATION

Exhibit No. Description Page

364 Defendants' Amended Notice of Taking 6
Deposition of Person(s) Most Knowledgeable
at the American Lung Association (Andy
Weisser)

365A-G Collection of documents contained in a file . 60
pertaining to Tobacco Control Advocacy;
Bates Nos. ALA00000486 - 589

366 Letter dated November 1, 1994 from Bruce A. . 76
Nasby to Dave Gold; Bates No. ALA000001520

367 Fax cover sheet dated 11/17/98 with attached 82
articles; Bates Nos. ALA000001307, 1297 -
1304

15	368A	Memo dated October 3, 1997 from Fran Du Melle with enclosures; Bates No. ALA00001607	84
16			
17	368B	Fax cover sheet dated Oct 15 98 from Paul to Andy with attached Testimony of Larry Lebowsky, Esq.; Bates Nos. ALA00001557, 1552-1556	84
18			
19	368C	Memo dated November 16, 1998 from Tony Najera to Executive Directors; Bates Nos. ALA00001547 - 1548	84
20			
21	369	Memo dated November 13, 1998 from Andy Weisser to Executive Directors with enclosure; Bates Nos. ALA00001404 - 1449	86
22			
23	370	Media Advisory with attached News Release dated April 22, 1997; Bates Nos. ALA00000693 - 697	93
24			
25	371	Press release dated December 16, 1997; Bates Nos. ALA00000828 - 829	99
26			
27	372	Press release dated December 30, 1997; Bates Nos. ALA00000826 - 827	103
28			
			2
1			
2	373	Four newspaper articles, the first of which is entitled "Breath of Fresh Air"; Bates Nos. ALA00000935, 1222-1224	104
3			
4	374	Fax cover sheet dated 1/16/98 from Andy Weisser to Cassandra Pride, along with a press release dated January 20, 1998 and a memo dated January 21, 1998; Bates Nos. ALA00000975, 1148, 1255 respectively	106
5			
6			
7	375	Full-page advertisement from THE NEW YORK TIMES on January 21, 1998; Bates Nos. ALA00001037, 1038	111
8			
9	376	Fax cover sheet dated February 9, 1998 from Marc Burgat to Andy Weisser with attachment; Bates Nos. ALA00001103 - 1104	112
10			
11	377A	Media Advisory dated February 10, 1998; Bates Nos. ALA00001099 - 1100	113
12			
13	377B	Press release dated February 10, 1998; Bates Nos. ALA00001093 - 1095	113
14	378	Two-page article entitled "Smoking Ban at San Diego Bars Has Patrons Fuming"; Bates Nos. ALA00001019 - 1020	115
15			
16	379	Three-page Summary of Findings, Smoke-Free Bar Patron Survey; Bates Nos. ALA00001086 - 1088	116
17			
18	380	Memo dated March 4, 1998 from Andrew Weisser to Executive Directors with attachment; Bates Nos. ALA 00001075, 1076	117
19			
20	381	Memorandum dated March 3, 1998 from Andy Weisser to Executive Directors and others with attachment; Bates Nos. ALA00000815 - 822	118
21			
22			
23	382	Fax cover sheet dated 3/20/98 from Andy Weisser to Carolyn Martin; Bates No. ALA00000990	122
24			
25	383	Press release dated June 25, 1998; Bates Nos. ALA00000863 - 864	

26 384 Fax Sheet dated December 1, 1998 from 124
 27 Jennifer Thompson to Andy Weisser with
 28 attachment; Bates Nos. ALA00000736 - 741

3

1
 2 385 Fax cover page dated 12/28/98 from Andy 124
 3 Weisser to Melinda; Bates Nos.
 4 ALA00000855,848,823-825

4 386 Two-page e-mail dated 1/5/1999 from Scott .. 124
 5 Horsley to aweisser with attached a
 6 monitoring report; Bates Nos. ALA00000808 -
 7 811

6 387 Draft memo dated March 8, 1999 from Andy ... 124
 7 Weisser to Jennifer Thompson, along with fax
 8 sheet to Laura Collins; Bates Nos. 731 - 733

9 388 Fax sheet dated 6/14/99 from Andy Weisser to 124
 10 Laura Collins with attachment; Bates Nos.
 11 ALA00000725,722,723,724

12 389 Fax dated 3/5/98, memo dated March 2, 1998 . 131
 13 and an article relating to Honeywell air
 14 filters and smoke-free bars; Bates Nos.
 15 ALA00000804 - 806

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15 Case No. 996781;)
)
16 The People of the State of)
California, et al. v. Tobacco)
17 Exporters, et al., San Francisco)
Superior Court Case No. 301631.)
18)

19 --oOo--

20 BE IT REMEMBERED that, pursuant to Notice and
21 Subpoena and on Wednesday, June 7, 2000, commencing at
22 10:00 a.m. thereof, at 1111 Broadway, Suite 1500,
23 Oakland, California, before me, CLARE MACY, a Certified
24 Shorthand Reporter, personally appeared
25 ANDREW M. WEISSER

26
27 called as a witness by the Defendant, who, having been
28 first duly sworn, was examined and testified as follows:

5

1 APPEARANCES OF COUNSEL

2 For the Defendant Lorillard Tobacco Company:

3 ALLEN MATKINS

4 By: HENRY LERNER

Attorney at Law

333 Bush Street, 17th Floor

5 San Francisco, California 94104-2806

Telephone: (415) 837-1515

6

For the Deponent, Andrew M. Weisser:

7

AIKEN, KRAMER & CUMMINGS, INC.

8 By: RICHARD A. SIPOS, Attorney at Law

1111 Broadway, Suite 1500

9 Oakland, California 94607

Telephone: (510) 834-6800

10

Also Present: KAREN THRO, Allen Matkins

11

--oOo--

12

13 (Whereupon, Defendant's Exhibit 364
was marked for identification.)

14

15 P R O C E E D I N G S

16 EXAMINATION BY MR. LERNER

17 MR. LERNER: Q. Would you please state your
18 full name.

19 A. Andrew Michael Weisser, W-E-I-S-S-E-R.

20 Q. And can you state your business address,
21 please?

22 A. The mailing address is P.O. Box 1640, Encino,
23 E-N-C-I-N-O, California, 91416-6400. I work for the
24 American Lung Association of California, reporting to
25 the Oakland address.

26 Q. Do you have a physical address where your
27 office is located?

28 A. I'm home based.

6

1 Q. What's that address, please?
2 A. It's [DELETED]
3
4 Q. Mr. Weisser, my name is Henry Lerner. I'm
5 with the Law Firm of Allen Matkins Leck Gamble &
6 Mallory. I'm here today representing Lorillard Tobacco
7 Company and taking your deposition in a case -- it's a
8 combined case called People of the State of California
9 versus Philip Morris & Company and -- Philip Morris,
10 Incorporated, and some other tobacco companies.
11 The purpose of the deposition today is to
12 determine your personal knowledge with regard to certain
13 issues which were the subject of a deposition notice
14 which has been marked as Exhibit 364.
15 Before we get into the deposition questions,
16 I wanted to ask you, have you had your deposition taken
17 before?
18 A. No.
19 Q. Have you had an opportunity to discuss with
20 Mr. Sipos what the rules are that govern a deposition?
21 A. Yes.
22 Q. Let me just go through some of those rules
23 with you right now to make sure that we have a mutual
24 understanding of what is going to occur, what our ground
25 rules are. First, you've been placed under oath by the
26 court reporter. That means you're under oath as though
27 you were in a courtroom, and it's your obligation to
28 testify truthfully to the matters under discussion.

7

1 Your testimony, the questions and answers,
2 will be transcribed in a booklet; you'll have an
3 opportunity to read and review the transcript of the
4 deposition. If you make any changes to the transcript,
5 attorneys would have an opportunity to comment on those
6 changes at the time of a trial in this case. Do you
7 understand that?
8 A. Yes, I do.
9 Q. Now, I'm not here to ask for you to speculate
10 or guess on any of the matters under which -- the
11 subject of my questions. So I ask that you don't
12 speculate or guess as to anything. If you can't give an
13 exact answer as to any particular question, then I'd ask
14 that you give your best estimate, and make it clear that
15 you're giving an estimate rather than something exact.
16 Is that understood?
17 A. Uh-huh.
18 Q. Now, since I'm not acquainted with your
19 business and don't have the same background in the
20 matters under discussion that you really do, some of my
21 questions may not make any sense. And you may just not
22 understand them because they're poorly worded. If there
23 is a question that you don't understand, I'd ask that
24 you let me know that on the record, and we'll attempt to
25 rephrase it for you. Is that clear?
26 A. Yes.
27 Q. Then finally, a couple of practical matters:
28 Your answers need to be audible so that they can be

8

1 taken down by the court reporter. She can't really
2 accurately take down a nod of the head. And also, we
3 should not talk at the same time, so that the court
4 reporter would have an opportunity to transcribe what we
5 both say.

6 A. Okay.
7 Q. Is that fair?
8 A. Yes.
9 Q. Great.
10 Now, turning to Exhibit 364, have you -- and
11 specifically, attachment 3 on page 3, have you had an
12 opportunity to review attachment 3 before today?
13 A. Yes, I have.
14 Q. Now, based on your own understanding as to
15 the knowledge of persons who are working at the American
16 Lung Association of California, are you the person most
17 knowledgeable concerning any of the topics identified on
18 attachment 3?
19 A. I am one of a few people.
20 Q. Which of the topics on attachment 3 do you
21 have knowledge about?
22 A. I'd say predominantly 1 and 2 and some on 3.
23 Q. And in the first topic referenced is goals of
24 the American Lung Association of California with regard
25 to informing, warning or educating residents on the
26 dangers of exposure to environmental tobacco smoke.
27 A. Correct.
28 Q. And that question covers the period of
9
1 time -- or that topic covers the period of time from
2 1991 through the present. Over what period of time do
3 you have knowledge with regard to that subject?
4 A. I've been an employee of the American Lung
5 Association of California since the fall of 1997. Prior
6 to that, I was with the American Lung Association of Los
7 Angeles County from roughly summer of '94.
8 Q. Do you have any knowledge with respect to the
9 time period from 1991 through 1994 of topic 1?
10 A. Peripherally, but again, I wasn't an employee
11 of ALA California at that point, but certainly working
12 with them.
13 Q. Now, let me just go to topic 2 -- or
14 returning to topic 1, who else to your knowledge has
15 information concerning the subject matter of topic 1?
16 A. Paul Knepprath in our government relations
17 office and Harriet Charney in our program department.
18 Q. Is there anyone else to your knowledge who is
19 familiar with that first topic?
20 A. In terms of the big picture of ALA
21 California, I would say those would be the most
22 appropriate people. Certainly other staff are involved
23 with the organization; they would know pieces of that.
24 But if you're looking for big picture, those two
25 individuals.
26 Q. With regard to topic 2, which is methods
27 utilized to achieve the goals of informing, warning or
28 educating residents of the dangers of environmental
10
1 tobacco smoke, are you knowledgeable with regard to
2 that?
3 A. Yes, I am.
4 Q. Is there anyone else whom you understand has
5 knowledge concerning that topic?
6 A. Again, Paul and Harriet, who I previously
7 mentioned.
8 Q. Now, your knowledge with regard to the second
9 topic covers the period from 1994 through the present?
10 A. Even though it says '91?

11 Q. Yes.
12 A. Correct.
13 Q. Do you have knowledge with regard to the
14 period of 1991 to 1994 on that topic?
15 A. That was prior to my employment. So
16 peripherally, just in my outside experience.
17 Q. With regard to topic 3, you mentioned that
18 you had some knowledge with regard to topic 3. Is there
19 anyone else who has knowledge with regard to topic 3?
20 That's evaluations and surveys to determine the
21 effectiveness of efforts to inform, warn or educate
22 residents of the dangers of environmental tobacco smoke.
23 A. Again, Paul and Harriet. I would say mostly
24 Paul with that item.
25 Q. We'll return to that a little bit later.
26 A. Okay.
27 Q. Can you tell me basically where you obtained
28 your college education?

11

1 A. California State University, Northridge, with
2 a Bachelor's in journalism, emphasis in public
3 relations, and a minor in business management.
4 Q. What year did you obtain your B.A. there?
5 A. 1985.
6 Q. Did you receive any postgraduate education?
7 A. UCLA extension course in public relations
8 management. I don't remember the exact year, about ten
9 years ago.
10 Q. Any other postgraduate education?
11 A. No.
12 Q. What was your first employment after you
13 received your degree in journalism?
14 A. I was with the public relations firm called
15 The Communication Works.
16 Q. What period of time or during -- What would
17 be the inclusive dates of your employment there?
18 A. Roughly spring 1985 through summer of 1986.
19 Q. Where was that firm located?
20 A. West Hollywood.
21 Q. What type of work did you do there?
22 A. Account coordination. I believe I was --
23 when I -- when the firm closed, I was an account
24 executive.
25 Q. What type of accounts did you work on at that
26 firm?
27 A. Predominantly not-for-profit. Some
28 hospitals, attorneys. Mostly not-for-profit

12

1 organizations.
2 Q. Did you work, do any work, for nonprofits in
3 health-related fields?
4 A. Yes.
5 Q. What were the nonprofits in the health field?
6 A. AIDS Project, Los Angeles. I don't recall if
7 Century City Hospital was a not-for-profit organization
8 at that point. Those are the two that come to mind.
9 Q. What was your next position after you left
10 Communications Works?
11 A. I became a full-time employee with AIDS
12 Project, Los Angeles. When the firm closed, all the
13 employees became an in-house department.
14 Q. What were the inclusive dates of your
15 employment with AIDS Project, Los Angeles?

16 A. From 1985 to 1991.
17 Q. What were your duties then?
18 A. I believe I was hired as a media or
19 communications specialist. And I had a number of
20 promotions. Ultimately, the director of communications.
21 Q. What were the duties of the director of
22 communications?
23 A. Overseeing internal and external
24 communications, media relations, across-the-board
25 communications activities.
26 Q. And what specifically were the communications
27 and media relations activities that you oversaw?
28 A. Essentially working as the in-house public

13

1 relations department to support the entire organization
2 regarding related issues, programs, fund-raising,
3 advocacy.

4 Q. So does that mean you issued press releases,
5 for example?

6 A. Yes.

7 Q. What other types of specific activities did
8 you specifically supervise?

9 A. Oversaw publications, internal and external
10 publications, working with reporters on related issues
11 and topics.

12 Q. Placing stories?

13 A. Uh-huh.

14 Q. Yes?

15 A. Yes.

16 Q. Thank you.

17 And that would include print and radio and TV
18 reporters?

19 A. Correct.

20 Q. And what types of reporter -- Did you work
21 with reporters in any particular -- specialized in any
22 particular areas, for example, health reporting or
23 general reporting, beat, editorial departments? What
24 were the --

25 A. A number of them, but including those that
26 you mentioned, depending upon the type of issue they
27 were covering? It would be various beat reporters.

28 Q. And from what area, from what locations did

14

1 these reporters come?

2 A. Local, state, national and international.

3 Q. Did you have occasion while you were with
4 AIDS Project of Los Angeles to work with other
5 organizations --

6 A. Yes.

7 Q. -- that had an interest in the issues that
8 you were involved with?

9 A. Yes.

10 Q. What other organizations did you have
11 occasion to work with?

12 A. Too many to name, quite frankly, but certain
13 other organizations working on H.I.V. and AIDS-related
14 issues, health-related organizations.

15 Q. While you were with AIDS Project,
16 Los Angeles, did any of your work concern environmental
17 tobacco smoke?

18 A. No.

19 Q. Did any of your work concern smoking in
20 general?

21 A. I don't believe so.
22 Q. After you departed from AIDS Project,
23 Los Angeles, when was your next employment?
24 A. I was a consultant for approximately six
25 months.
26 Q. Independent consultant?
27 A. Uh-huh, and then accepted a position with the
28 National Kidney Foundation of Southern California.

15

1 Q. What types of projects did you work with
2 while you were an independent consultant?
3 A. I'm trying to think. I believe I had two
4 projects in that six-month period. Both of them were
5 relating to -- One of them was HIV-related; it was
6 helping to promote fund-raising events for an AIDS
7 hospice. And the second project was to promote -- media
8 awards project for an organization called the Center for
9 Population Options.
10 Q. What were the inclusive dates of your
11 employment with the National Kidney Foundation?
12 A. Let's see. Approximately fall of '91, I
13 believe, through late summer of '94.
14 Q. What was your title there?
15 A. I had a few different titles. I was hired as
16 a communications director and ultimately oversaw
17 communications and program departments. I believe my
18 last title was associate director.
19 Q. And that position was based in Los Angeles,
20 also?
21 A. Correct.
22 Q. What specifically did your work consist of as
23 a communications program director?
24 A. Including what I did at AIDS Project,
25 Los Angeles, also overseeing program activities.
26 Q. What do you mean by program activities?
27 A. For example, patient education research
28 working with the medical advisory board.

16

1 Q. So these are program activities aimed at
2 education and research but not specifically into public
3 relations or media?
4 A. It included that.
5 Q. Publicity?
6 A. It included that, because I was overseeing
7 both functions by the time I left the organization.
8 Q. What I'm asking about, the term "program
9 activities --"
10 A. Uh-huh.
11 Q. -- do programs include public relations or
12 media relations?
13 A. No. They were two separate departments.
14 Q. So program activities include educational
15 programs --
16 A. Correct.
17 Q. -- as well as research programs?
18 A. Uh-huh.
19 Q. And do they include programs that end up
20 coordinating with other organizations?
21 A. Yes.
22 Q. Whereas public relations would be press
23 releases publicizing various issues --
24 A. Yes.
25 Q. -- through the media?

26 A. Yes.
27 Q. And so on?
28 A. Yes.

17

1 Q. Did any of your work at the National Kidney
2 Foundation pertain to environmental tobacco smoke?
3 A. No.
4 Q. What was your next position after the
5 National Kidney Foundation?
6 A. American Lung Association of Los Angeles
7 County.
8 Q. And when did you begin working there?
9 A. Right after the National Kidney Foundation,
10 roughly late summer, early fall, I believe, in 1994.
11 Q. You mentioned you left there in fall of 1997;
12 is that correct?
13 A. To accept the position with ALA of
14 California, yes.
15 Q. I'll refer to the American Lung Association
16 as ALA.
17 A. Uh-huh.
18 Q. Is that a designation that you use?
19 A. Yes.
20 Q. Is ALA of Los Angeles a different
21 organization than ALA of California?
22 A. It's part of an overall same organization --
23 they are separately incorporated not-for-profit
24 organizations -- contracted by the ALA of California.
25 Q. What do you mean by contracted by ALA of
26 California?
27 A. It's an affiliate. So they hold a contract
28 with the ALA of California to conduct programs and

18

1 activities in that county.
2 Q. By contractor, do you mean that -- you also
3 mean that as an affiliate, ALA of Los Angeles is funded
4 by ALA of California?
5 A. It's really the other way around. The state
6 organization, ALA of California, receives its funding
7 through its local organizations, like a ALA of Los
8 Angeles County.
9 Q. So fund-raising programs are conducted by
10 local affiliates of the state organization?
11 A. Correct.
12 Q. And then the state organization contracts
13 with the local affiliates to conduct different programs?
14 A. Yes.
15 Q. So the money then returns from the state
16 organization to the local affiliates?
17 A. Somewhat. I mean, it's a combination.
18 Q. A combination of funding?
19 A. We do statewide programs and activities to
20 support locals, and it's a concerted effort.
21 Q. What was your title at ALA of Los Angeles
22 when you began working there?
23 A. I believe it was director of communications.
24 And then when I left, it was vice president of
25 communications. I don't remember the exact date of the
26 transition between the two titles.
27 Q. What were your duties as director of
28 communications?

19

1 A. Similar to previous communications positions

2 I held: overseeing internal and external
3 communications, working with the media communications
4 planning.
5 Q. What were your duties as vice president of
6 communications?
7 A. Working with the media, planning and
8 developing internal and external publications, working
9 with the other departments within the organization.
10 Q. How did those duties differ from the ones you
11 had as director of communications?
12 A. Not much.
13 Q. Was there an increase in responsibility when
14 you became vice president of communications?
15 A. I believe there was a pay increase and
16 essentially doing the same -- generally the same types
17 of activities.
18 Q. Did you have a staff that you supervised?
19 A. Yes.
20 Q. How many people -- or what was the range of
21 number of people on your staff during the period of time
22 you were with ALA of Los Angeles?
23 A. It went from two to one. And also, in that
24 capacity, oversaw advocacy activities.
25 Q. What are advocacy activities?
26 A. Working on public policy priorities to
27 educate opinion leaders on our priority issues and
28 public.

20

1 Q. Did you have any fund-raising
2 responsibilities at ALA Los Angeles?
3 A. Similar to other positions, supporting that
4 department but not doing the hands-on development work.
5 Q. Let me see if I can summarize with you the
6 areas of responsibility you had at ALA Los Angeles.
7 A. Okay.
8 Q. One is you worked with external media?
9 A. Yes.
10 Q. To publicize various issues or activities?
11 A. Correct.
12 Q. Secondly, you had responsibility for external
13 communications, which would mean publications?
14 A. Publications, media relations, reaching
15 people outside of the organization.
16 Q. You have responsibility for internal
17 communications?
18 A. Yes.
19 Q. What does that mean?
20 A. Internal publications, communicating with
21 volunteers and staff.
22 Q. And then you had responsibility for advocacy
23 activities?
24 A. Yes.
25 Q. Were there any other major areas of
26 responsibility that are not included in these four?
27 A. I'd say they mostly fall within those
28 categories.

21

1 Q. Anything else you can recall?
2 A. Huh-uh, no.
3 Q. You said you had two people on your staff
4 initially?
5 A. Yes.
6 Q. Were they professional staff?

7 A. How are you defining that?
8 Q. Were they people who assisted you in dealing
9 directly with outside -- with the media or in preparing
10 communications --
11 A. Yes.
12 Q. -- as opposed to clerical?
13 A. One was clerical, but she was -- she had
14 other responsibilities in her position, but basically
15 administrative. And the other position, which was
16 eliminated, was a communications coordinator, I believe,
17 or media relations manager. I don't know their exact
18 title.
19 Q. And your position at ALA Los Angeles was
20 full-time?
21 A. Yes.
22 Q. Did your responsibilities include working
23 with other organizations?
24 A. Yes.
25 Q. Did your advocacy activities include working
26 on any initiative or political campaigns?
27 A. Yes.
28 Q. Did your responsibilities at ALA Los Angeles

22

1 include anything pertaining to advertising?
2 A. Yes.
3 Q. Is that part of external communications?
4 A. Yes.
5 Q. And in the context of working with external
6 media, did your activities include issuing press
7 releases?
8 A. Yes.
9 Q. Did they include communicating or talking to
10 reporters?
11 A. Yes.
12 Q. Talking to editorial boards?
13 A. Yes.
14 Q. What other kinds of activities did you engage
15 in in terms of dealing with external media?
16 A. Sending out public service announcements.
17 Q. Did you arrange interviews?
18 A. Yes.
19 Q. Now, I'll return to those various activities
20 in relation to ETS or environmental tobacco smoke. But
21 I first wanted to go back to the first specific topic of
22 attachment 3, which is goals regarding informing,
23 warning or educating residents of the danger of ETS.
24 While you were with American Lung
25 Association, Los Angeles, did you become acquainted with
26 any goals of that organization regarding informing,
27 warning or educating residents of the dangers of
28 environmental tobacco smoke?

23

1 A. Yes.
2 Q. At the time you arrived at ALA Los Angeles,
3 were there any such -- were any such goals already in
4 place?
5 A. Yes.
6 Q. Okay.
7 MR. LERNER: Off the record.
8 (Karen Thro enters deposition room)
9 MR. LERNER: We can go back on the record.
10 Q. So what were the goals of that organization
11 with regard to environmental tobacco smoke at the time

12 you arrived there?
13 MR. SIPOS: It seems to me the subpoena is
14 directed at the American Lung Association of California
15 and as to three topics. You now seem to be asking about
16 local affiliates, which is a separate corporation, which
17 seems to be outside the scope of the subpoena.

18 And I realize there's probably a fair amount
19 of overlap, but I don't want to have to prolong the
20 deposition by having him go through a whole other
21 entity's efforts. I think it would be better if you ask
22 him what the state's, ALAC's, goals were. And to the
23 extent the local affiliate was involved in that program,
24 he can obviously testify about it. But if you're going
25 to go through all kinds of -- I mean, the state and
26 local affiliates are different entities.

27 MR. LERNER: I appreciate that. I'll try to
28 be more direct so we can get at it directly and save

24

1 some time.

2 MR. SIPOS: Yeah.

3 MR. LERNER: Q. Did you become acquainted
4 while you were -- shortly after you arrived at the
5 American Lung Association of Los Angeles with the goals
6 of the American Lung Association of California with
7 regard to informing, warning or educating residents of
8 the dangers of environmental tobacco smoke?

9 A. Yes.

10 Q. Were those goals any different than the goals
11 of the organization that you were part of?

12 A. Generally the same, but the locals can adopt
13 more specific projects depending upon the city or county
14 that they serve.

15 Q. Generally speaking, what were the goals in
16 those areas of the American Lung Association of
17 California at that time?

18 A. I won't remember the exact details, but
19 general information regarding ETS and related exposure.

20 Q. I'm sorry. I didn't really understand your
21 answer. You mean that the goals were to provide
22 residents with general information concerning ETS and
23 the dangers it posed -- health risks it posed?

24 A. In part. Again, what I'm concerned about is
25 telling you specific language that might have been in a
26 public policy priority. And not having memorized those
27 documents, I don't want to give you that type of
28 specific. But they would fall within that.

25

1 Q. So where there was a general public
2 educational purpose. Is that what you're saying?

3 A. Yes.

4 Q. Were there any other general purposes that
5 you can recall?

6 A. Generally, I would say it could fall within
7 that category.

8 Q. When we talk about goals, were there any
9 particular achievements that were expected from or set
10 for a general public information program?

11 A. Yes.

12 Q. What were they -- In that sense of the word
13 "goals," what was expected by way of achievements?

14 A. To help people understand the health risks
15 associated with ETS.

16 Q. Was there a goal of trying to reach any

17 particular portion of the population or any specific
18 elements of the population?

19 A. I would say both general awareness and, more
20 probably, specific campaign components within that.

21 MR. SIPOS: Just for the record, when you use
22 the phrase "ETS," you mean environmental tobacco smoke?

23 THE WITNESS: Yes.

24 MR. LERNER: Q. How did you become aware
25 of those goals of the American Lung Association of
26 California?

27 A. Through our strategic plan, both nationwide
28 and statewide, and our public policy priorities.

26

1 Q. When you say "through our strategic plan," do
2 you mean the strategic plan of the American Lung
3 Association nationally?

4 A. There are two. The national has one, as does
5 the state organization.

6 Q. Was there a document that set forth the
7 strategic plan for the American Lung Association of
8 California?

9 A. Yes.

10 Q. What was the name of it?

11 A. Something like ALA of California Strategic
12 Plan.

13 Q. Okay. That was a document that was existing
14 at the time you arrived at ALA Los Angeles?

15 A. I believe so. I don't know, when I arrived
16 at that office, if I was aware of that document's
17 existence. But given the history of the organization, I
18 would assume it existed.

19 Q. Let's just refer to that document now for
20 convenience as the strategic plan.

21 A. Uh-huh.

22 Q. Did the strategic plan set forth goals that
23 pertained to ETS?

24 A. I know that tobacco was included in that. If
25 it said specifically ETS, I don't recall.

26 Q. Is American Lung Association of California an
27 organization that has individual members?

28 A. The reason I'm hesitating is there are

27

1 different -- there's different interpretations or
2 definitions of members. There are people who donate to
3 the organization. Those could be referred to as
4 members. Technically, we don't call them -- but in a
5 broad term or definition of member, I would say yes.
6 People who affiliate with us.

7 Q. So there are fund-raising campaigns where
8 people contribute?

9 A. Uh-huh.

10 Q. And those people contribute --

11 MR. SIPOS: Let him finish his question
12 before you answer.

13 MR. LERNER: Q. -- to the American Lung
14 Association of California, and those people can be
15 called members?

16 A. In the loose term.

17 Q. They're not shareholders?

18 A. No.

19 Q. Do you have any knowledge as to how many
20 members American Lung Association of California has?

21 A. And how are you defining members?

22 Q. The people who contributed, contributors.
23 A. I have a rough estimate.
24 Q. Approximately how many?
25 A. Specifically donors, I'd say approximately
26 one to one and a half million.
27 MR. SIPOS: Is your answer in terms of
28 currently right now as opposed to back in '9 --

28

1 THE WITNESS: Yes.
2 MR. LERNER: Q. How many donors -- Do you
3 have any knowledge as to how many donors American Lung
4 Association of California had back in '94?
5 A. I don't.
6 Q. Has the number changed over the years?
7 A. I would assume so.
8 Q. Do you know anything about that?
9 A. No.
10 Q. Now, is there another usage of the term
11 "members" with regard to American Lung Association of
12 California?
13 A. In the broad sense, yes.
14 Q. Who else is considered a member in the broad
15 sense?
16 A. I would say volunteers.
17 Q. And what do volunteers do for the
18 organization?
19 A. A variety of activities.
20 Q. Do any of the activities pertain to
21 communications?
22 A. Some of them.
23 Q. What volunteer activities pertain to
24 communications?
25 A. We have a communications committee comprised
26 of volunteers.
27 Q. And the volunteers are located throughout
28 California?

29

1 A. Yes.
2 Q. How many members -- How many people serve on
3 the communications committee?
4 A. Approximately 12.
5 Q. What is the function of the communications
6 committee?
7 A. To provide oversight, strategic planning
8 ideas.
9 Q. Was the communications committee in existence
10 in 1994?
11 A. Yes.
12 Q. And it's continued in existence until the
13 present?
14 A. Correct.
15 Q. What's the range of number of members on the
16 committee over the years?
17 A. I'd say approximately 8 to 12.
18 Q. Are you a member?
19 A. I'm the staff person who works with that
20 committee. And some of those committee members are also
21 staff from local lung associations. So technically,
22 they're paid by their local office and volunteering for
23 the statewide committee.
24 Q. And other than staff of local lung
25 associations, who are the people on the committee?
26 A. Various people, advertising, from industries

27 of advertising, communications, marketing.
28 Q. Public relations people?

30

1 A. Yes.
2 Q. And how long have you been a staff person
3 serving the communications committee?
4 A. Since I started with the organization.
5 Q. In 1997?
6 A. Yes.
7 Q. Did you serve on the communications committee
8 while you were with ALA Los Angeles?
9 A. Yes.
10 Q. When did you begin serving on the
11 communications committee?
12 A. I won't remember the exact date, but I would
13 say at least my last year when I was on staff at the ALA
14 of Los Angeles County.
15 Q. 1996-1997?
16 A. It could have been prior to that. I don't
17 remember the exact date.
18 Q. And you were actually a member of the
19 committee at that point?
20 A. Yes.
21 Q. And did you remain a member of the committee
22 when you moved to American Lung Association of
23 California?
24 A. My status changed from committee member to
25 the staff member working with the committee.
26 Q. Did you have knowledge of the committee's
27 activities before you became a member of it in 1995 and
28 '96?

31

1 A. Probably.
2 Q. Did the committee engage in any activities,
3 oversight, strategic planning with regard to
4 environmental tobacco smoke at that point in time?
5 A. I'm sure the committee addressed that related
6 issue.
7 Q. Starting as far back as you can remember,
8 what has the committee done with respect to
9 environmental tobacco smoke?
10 A. It would address related campaigns that we
11 were considering and provide their feedback.
12 Q. How long does the committee -- Does the
13 committee have regular meetings?
14 A. Uh-huh.
15 Q. How frequently?
16 A. Twice a year physically and some conference
17 calls either in whole or in part.
18 Q. Do the meetings have agendas?
19 A. Yes.
20 Q. And do the staff people prepare the agendas?
21 A. In combination with the chair of the
22 committee, which is a volunteer.
23 Q. And are minutes of the meetings prepared?
24 A. Yes.
25 Q. Returning to attachment 3 and the second
26 topic, which is methods utilized to achieve the goals of
27 informing, warning or educating residents, what methods
28 have been utilized by American Lung Association of

32

1 California since you began working at ALA of Los Angeles
2 to inform, warn or educate residents of the dangers of

3 environmental tobacco smoke?
4 A. This is regarding item 3?
5 Q. Item 2, methods utilized.
6 A. Item 2. A variety of means through media
7 relations efforts, newsletters, public service
8 announcements, other types of communications vehicles.
9 Q. Let's talk about media relations. Media
10 relations includes communicating with reporters?
11 A. Yes.
12 Q. So what typically is done to communicate with
13 reporters with regard to educating the public on ETS?
14 A. Quite a number of things from reactive media
15 responding to calls that come in, proactive media
16 initiating calls, sending out news releases.
17 Q. Placing interviews?
18 A. Uh-huh.
19 Q. Arranging press conferences?
20 A. Yes.
21 Q. Are there any other activities that to your
22 knowledge American Lung Association of California has
23 engaged in by way of media relations to promote its
24 goals with respect to environmental tobacco smoke?
25 A. Generally, they would fall within those
26 categories. Involvement in opinion editorial or
27 editorial board meetings.
28 Q. Do media relations include placing

33

1 advertisements, or is that another category?
2 A. It would be a separate category.
3 Q. Would that be part of external
4 communications?
5 A. Uh-huh.
6 Q. With regard to external communications other
7 than media relations, what else is done in addition to
8 advertising?
9 A. Certainly our website.
10 Q. When was the -- And you're referring to the
11 American Lung Association of California website?
12 A. Correct.
13 Q. When was that website put up?
14 A. August of '99.
15 Q. In addition to advertising and website, are
16 there any other activities undertaken with regard to
17 external communications?
18 A. I think I previously mentioned newsletters.
19 Q. Does ALA of California have a newsletter that
20 pertains to environmental tobacco smoke?
21 A. Not specific to that, but for the overall
22 purposes of the organization.
23 Q. What's the name of the newsletter?
24 A. Breathe Easy News Magazine.
25 Q. When did that publication first come out?
26 A. I don't recall. It existed when I came into
27 the position.
28 Q. How frequently is it issued?

34

1 A. The last couple of years twice a year.
2 Q. Does it have subscribers?
3 A. Again, in the broad sense. It goes to
4 donors, community organizations.
5 Q. What's the circulation of Breathe Easy?
6 A. It varies, but approximately 20- to 30,000
7 copies each edition.

8 Q. Has Breathe Easy Magazine included
9 information pertaining to the dangers of environmental
10 tobacco smoke?
11 A. In one form or another, yes.
12 Q. Are there any other publications that are
13 used?
14 A. Externally?
15 Q. For external communications.
16 A. That is the main external publication.
17 Q. Are there any e-mail lists or --
18 A. Yes.
19 Q. -- announcements?
20 A. Yes.
21 Q. What is done by way of e-mail?
22 A. In terms of newsletters?
23 Q. Or other external communications.
24 A. Well, the only list serve that we have in
25 California is an internal list serve.
26 Q. So e-mail is not used to circulate materials
27 externally?
28 A. They might be used to circulate them, but
35
1 it's not a list serve subscriber based. People can
2 subscribe on the website, but we haven't activated that
3 at this point.
4 Q. With regard to advertising, what has American
5 Lung Association done to advertise the dangers of
6 environmental tobacco smoke since 1994?
7 A. And you're talking about paid advertising or
8 any print or -- can you define that more specifically?
9 Q. Sure. What's been done by way of paid print
10 advertising?
11 A. I was trying to go back in time because there
12 were so many projects that we've worked on.
13 Q. Well, I'll try to break it down.
14 A. Okay.
15 Q. Have there been paid print advertising
16 projects that have been utilized since 1994?
17 A. Yes, yes. My hesitation, again, is that I
18 don't recall the exact content of each ad and which ones
19 were ETS and which ones might have had a tobacco focus
20 generally.
21 Q. But your responsibilities include supervising
22 any such advertising?
23 A. Yes. And sometimes I will be part of but not
24 the only staff member or volunteer working on those
25 types of campaigns.
26 Q. Has there been a budget for advertising at
27 ALA of California?
28 A. A line item that says Advertising, no.
36
1 Q. So what campaigns can you recall that have
2 been directed at environmental tobacco smoke?
3 A. Again, my hesitation is there are some that
4 were produced for no charge that we made available.
5 Others that had paid moneys behind them, I'm not going
6 to be able to remember which ones had some money behind
7 and which ones didn't.
8 Q. Without making that distinction, can you
9 recall advertising campaigns directed at the dangers of
10 ETS?
11 A. I won't remember specific ones. I mean, if I
12 saw some, I can tell you. But again, we're involved in

13 so many ETS campaigns.
14 Q. You mean advertising campaigns?
15 A. I answered that in the broad sense. That
16 might include news releases, advertising that might have
17 been donated to us to help people understand the issue.
18 Q. You have mentioned the public service
19 announcements as a method that was utilized to warn of
20 the dangers of ETS? What do you mean by public service
21 announcements?
22 A. Public service announcements are essentially
23 ads that aren't placed with money, radio public service
24 announcements, for example. You send them to radio
25 and/or TV or print media, and if they have space
26 available, they'll donate that space to you.
27 Q. Have public service announcements been
28 distributed by American Lung Association of California

37

1 that pertain to ETS?
2 A. We might have, but I don't believe so.
3 Q. So that's not a technique that was utilized
4 or a method that was utilized to warn of any dangers of
5 ETS?
6 A. Again, I'm trying to go back in time and
7 think of all the campaigns we've been involved with and
8 those that might have been tobacco related and those
9 that might have been ETS related. I don't believe since
10 I've been in this position that we had any ETS public
11 service announcements.
12 Q. Now, you mentioned that arranging interviews
13 was another technique utilized.
14 A. Uh-huh.
15 Q. Did American Lung Association of California
16 arrange any interviews that pertain to the dangers of or
17 health risks of environmental tobacco smoke?
18 A. Yes.
19 Q. Can you recall interviews that were arranged?
20 A. Far too many to recall.
21 Q. Can you estimate approximately how many
22 interviews were arranged?
23 A. I really couldn't.
24 Q. Numerous?
25 A. Numerous.
26 Q. And those were arranged with print reporters?
27 A. All types of reporters. Print, electronic.
28 Q. Is that an activity that has been undertaken

38

1 since 1994?
2 A. I would assume prior to as well.
3 Q. But it's certainly something that's been done
4 regularly since you were --
5 A. Yes.
6 Q. -- familiar or since you became involved in
7 American Lung Association activities in '94?
8 A. Yes.
9 Q. Can you recall any of the specific media
10 outlets, that is, newspapers, TV stations, radio
11 stations, for which interviews on the topic of ETS were
12 arranged?
13 A. I can think of examples. But again, they are
14 numerous from local, statewide and national.
15 Q. What are some examples?
16 A. LOS ANGELES TIMES. Various television and
17 radio stations. I mean, there are far too many to

18 recount.

19 Q. And in the context of arranging interviews,

20 were you successful in getting some media exposure for

21 the dangers of ETS --

22 A. Yes.

23 Q. -- through interviews?

24 A. Yes.

25 Q. For whom or who are the people for whom you

26 arranged interviews?

27 A. It depends upon the campaign or the topic.

28 Q. With regard to ETS in particular, can you

39

1 recall any persons whose interviews you arranged?

2 A. Again, far too many, but it's a combination

3 of volunteers and staff and some peripheral sources.

4 Q. So when you say volunteers, you mean the

5 interviewees are volunteers?

6 A. Right.

7 Q. Who have some expertise in ETS?

8 A. Yes.

9 Q. And when you say staff members, interviews

10 were arranged for staff members who have some expertise

11 in ETS?

12 A. Yes.

13 Q. What do you mean by peripheral sources?

14 A. If they were looking for someone who had quit

15 smoking, as an example. Other organizations that might

16 have history on the issue or direct involvement.

17 Q. Now, have you arranged any editorial board

18 meetings with regard to environmental tobacco smoke?

19 A. Either arranged or was involved in the

20 process.

21 Q. What editorial board meetings were you

22 involved with that pertain to the risks -- health risks

23 of environmental tobacco smoke?

24 A. Recent example is Proposition 10's tobacco

25 tax.

26 Q. What publications were involved?

27 A. Mostly major daily newspapers in California.

28 Q. Which major daily newspapers did you help

40

1 arrange, participate in editorial board meetings for on

2 that topic?

3 A. I won't remember the comprehensive list.

4 Some that I assisted with, I believe, are L.A. TIMES,

5 San Francisco CHRONICLE, and other major dailies.

6 Q. Approximately how many newspapers are you

7 referring to?

8 A. I'd say approximately eight.

9 Q. So did that include the SACRAMENTO BEE?

10 A. I believe so.

11 Q. Did it include a newspaper in SAN DIEGO?

12 A. Probably.

13 MR. SIPOS: Is that the UNION?

14 THE WITNESS: TRIBUNE.

15 MR. LERNER: Thank you.

16 THE WITNESS: That doesn't mean that all

17 those resulted in actual meetings, but the approach was

18 made.

19 MR. LERNER: Q. Have you ever attended any

20 editorial board meetings that pertain to ETS?

21 A. Not that I recall.

22 Q. Are you acquainted with editorial board

23 members from any of the eight newspapers you mentioned?
24 A. Through phone interactions.
25 Q. By that you mean yes, you are?
26 A. Yes.
27 Q. You mentioned that Harriet Charney is also a
28 person who has knowledge concerning topics 1 and 2?

41

1 A. Uh-huh.
2 Q. And that her area is programs?
3 A. Correct.
4 Q. What programs does she have responsibility
5 for that pertain to ETS?
6 A. Smoking cessation programs, for example. Her
7 job is focused on -- she's director of Program Services,
8 which means that she provides assistance to our local
9 associations, not limited to, but including tobacco
10 issues. So that would be an example of the type of
11 program she would work on.
12 Q. If I could return to your employment at
13 American Lung Association, Los Angeles, your duties
14 included serving on the communications committee of
15 American Lung Association of California?
16 A. Yes.
17 Q. Did you serve on any other committees in that
18 job?
19 A. Any committees or with ALA of California?
20 Q. Any committees.
21 A. I'm assuming so.
22 Q. Did you work with any other -- Did you work
23 with any other organizations that had an interest in
24 environmental tobacco smoke?
25 A. Yes.
26 Q. And I'm talking about the period of time you
27 were with ALA Los Angeles?
28 A. Yes.

42

1 Q. What other organizations?
2 A. L.A. Link.
3 Q. What is L.A. Link?
4 A. It's a regional coordinating organization for
5 Prop 99 tobacco tax-funded organizations on the local
6 level within Los Angeles County.
7 Q. Okay. What other organizations?
8 A. California Lavender Smoke-Free Project, which
9 is a Prop 99 funded program.
10 Q. What is California Lavender Smoke-Free
11 Project?
12 A. They work on issues pertaining to tobacco in
13 gay and lesbian, transgender and bisexual communities.
14 Q. What other organizations?
15 A. In terms -- As a committee member of L.A.
16 Link -- it's a -- they are a coalition organization, so
17 I attended those meetings. The California Lavender
18 Smoke-Free Project, I was involved in the committees. I
19 believe those are the two more regularly attended
20 related meetings.
21 Q. Did these two organizations have any
22 relationship with the American Lung Association of
23 California?
24 A. How are you defining relationship?
25 Q. Well, ALA attempts to implement any of its
26 goals pertaining to warning the public about health
27 risks of ETS through its relationships with such

28 organizations.

43

1 A. Well, there are common interests.
2 Q. So there was an attempt to work together?
3 A. Yes.
4 Q. When you moved to American Lung Association
5 of California, what was your title initially?
6 A. Same as it currently is, vice president,
7 communications.
8 Q. What were your duties as vice president of
9 communications when you arrived at the organization?
10 A. Similar to what they are now. Much like
11 those in the Los Angeles affiliate, however, for the
12 statewide organization, not including advocacy
13 activities specifically, but supporting that function.
14 Q. So you don't direct advocacy activities?
15 A. No.
16 Q. Who does direct advocacy activities at ALA
17 California?
18 A. Paul Knepprath.
19 Q. Now, have you had a staff at American Lung
20 Association of California?
21 A. I guess you could say that, a half a staff.
22 Q. What is your half a staff?
23 A. She's an administrative support person who I
24 share with Harriet in the program department.
25 Q. Does your work as vice president of
26 communications entail any activities that you pursue
27 through affiliates?
28 A. Yes.

44

1 Q. So how do you work with affiliates in doing
2 your job?
3 A. A number of different ways. Through one,
4 interactions, conference calls, e-mail interactions.
5 Q. Do the affiliates have their own
6 communications directors?
7 A. Some do.
8 Q. Which of the affiliates have communications
9 directors that you work with?
10 A. I need to qualify this by saying some offices
11 have had lapses while that position is filled or not.
12 But generally speaking, San Diego, Orange County,
13 Los Angeles, San Francisco, Redwood. And some staff
14 wear multiple hats and work on communications
15 activities. But those are the offices that have
16 dedicated communications staff. Actually, Redwood is a
17 multiple hat position.
18 Q. Do you have a formal means of coordinating
19 with the communications people from the affiliates?
20 A. Yes.
21 Q. What is that?
22 A. That I host monthly communications conference
23 calls. As I said earlier, one-on-one interactions.
24 Those are the main means.
25 Q. When did these monthly communications
26 conference calls begin to be held?
27 A. Before I started with the organization.
28 Q. So these were calls you participated in when

45

1 you were with ALA Los Angeles?
2 A. Yes.
3 Q. Did the monthly communications conference

4 calls take place at the time you began at ALA
5 Los Angeles?
6 A. I don't think they were -- I think they
7 started after I began my work there, but probably within
8 the last year of my work in L.A.
9 Q. Do you have a supervisory role with regard to
10 the communications personnel of the affiliates?
11 A. No.
12 Q. So you coordinate activities?
13 A. Yes.
14 Q. And how do you coordinate activities
15 specifically?
16 A. Through the conference calls, one-on-one
17 interactions.
18 Q. I'm trying to understand. Is the agenda set
19 by ALA of California and then communicated to the
20 affiliates through conference calls, or is the agenda
21 set by the affiliates?
22 A. When you are referring to the agenda, are you
23 referring to the monthly calls?
24 Q. Yeah.
25 A. Those agendas are generally set by me, and
26 locals can contribute to agenda items.
27 Q. Are they written agendas that are
28 distributed?

46

1 A. Yes.
2 Q. Are minutes of the calls taken?
3 A. Yes.
4 Q. Are the minutes distributed?
5 A. Yes.
6 Q. Are they distributed by paper or by e-mail?
7 A. Both. By fax and e-mail.
8 Q. Now, has the communications -- Have the goals
9 of ALA of California with regard to ETS been the subject
10 of discussion at any monthly communications conference
11 calls?
12 A. I don't think the goals specifically.
13 Perhaps objectives or projects within that issue, yes.
14 Q. So projects or methods to implement the goals
15 have been discussed?
16 A. Yes.
17 Q. Can you recall any ETS projects or activities
18 that were the subject of discussions at -- for any
19 discussion at any monthly communications conference
20 calls?
21 A. An example would be smoke-free bars.
22 Q. So this has been discussed more than once?
23 A. Uh-huh. That would be yes.
24 Q. Thank you.
25 Would Prop 99 have been a topic?
26 A. Yes. We have a couple of statewide Prop 99
27 projects.
28 Q. And would the initiative campaigns pertaining

47

1 to smoke-free bars have been discussed?
2 A. Yes.
3 Q. Were any activities undertaken with regard
4 to -- strike that.
5 Is any kind of policy formulated at these
6 monthly communications conference calls?
7 A. No.
8 Q. So what's the purpose -- generally the

9 purpose of these calls?
10 A. To coordinate, brainstorm, share ideas.
11 Q. So basically the idea is you get together and
12 talk about how to get the message out?
13 A. Uh-huh, yes.
14 Q. Since you've been at ALA of California, has
15 there been a budget for communications activities?
16 A. Yes.
17 Q. Is any portion of the budget specifically
18 devoted to environmental tobacco smoke issues?
19 A. In the communications budget?
20 Q. Yes.
21 A. Specifically, no. When the --
22 Q. I'm sorry. Go ahead.
23 A. When the budget is functionalized, it's
24 spread out over the issues that we address. But I don't
25 have a tobacco line item in my budget.
26 Q. Does ALA have a budget that contains an
27 amount for ETS programs?
28 A. Not that I'm aware of.

48

1 Q. So how is it determined what funds are to be
2 allocated for activities that pertain to ETS?
3 A. Percentage of staff time, project priorities.
4 Q. At the present time, are there any budget
5 parameters that relate to ETS?
6 A. Not that I'm aware of. Certainly we have our
7 two statewide Prop 99 projects. It does have a budget.
8 But those aren't specific to ETS. It might include that
9 but not specific to.
10 Q. Is it possible to determine how much of the
11 budget for communications pertains to ETS issues?
12 A. No. I mean, generally tobacco issues, but
13 ETS-specific, no.
14 Q. Is there a name for the monthly
15 communications conference calls?
16 A. That's it.
17 Q. Okay. How long do these conference calls
18 typically take?
19 A. An hour.
20 Q. Can you estimate how much of your time since
21 you've arrived at the American Lung Association of
22 California has been concerned with ETS activities?
23 A. Not specific to ETS.
24 Q. Can you estimate how much pertains to
25 tobacco-related matters?
26 A. I'd say approximately 15 percent. 15,
27 20 percent. It depends upon the month or period of
28 time.

49

1 Q. And some portion of that 15 percent then is
2 related to environmental tobacco smoke?
3 A. Yes.
4 Q. I think I probably ought to get this type of
5 information on the record.
6 What is the American Lung Association of
7 California?
8 A. We're a 5013C not-for-profit organization.
9 Our mission is to prevent lung disease and promote lung
10 health.
11 Q. And when was American Lung Association of
12 California founded?
13 A. Is this a test? I would say roughly 1915, I

14 believe. 1914, I think.
15 Q. And where is it located, its offices located?
16 A. The main state office is Oakland, California.
17 Q. What's the address?
18 A. 424 Pendleton Way, 94621.
19 Q. Who do you report to?
20 A. Ben Abate.
21 Q. What is Mr. Abate's position?
22 A. President and C.E.O.
23 Q. Does the organization have a board of
24 directors?
25 A. Yes.
26 Q. How many members are on the board?
27 A. I believe it's approximately 40.
28 Q. Some of the documents that were produced in

50

1 response to our subpoena to American Lung Association of
2 California were from the American Thoracic Society.
3 A. Uh-huh.
4 Q. Does ALA of California have a relationship
5 with American Thoracic Society?
6 A. Not a formal relationship.
7 Q. There's an informal relationship?
8 A. Uh-huh.
9 Q. What is the nature of that relationship?
10 A. The American Thoracic Society was the medical
11 section of the American Lung Association nationwide.
12 Recently, there was a separation between the two
13 entities. However, we still work with them.
14 Q. Have any of the activities that you work with
15 them on pertained to ETS?
16 A. Organizationally, I'm assuming so.
17 Q. Do you know of any?
18 A. Generally, but not specifically.
19 (Discussion off the record)
20 MR. LERNER: Why don't we take a break for a
21 few minutes.
22 MR. SIPOS: Okay.
23 (Recess taken from 11:23 to 11:40 a.m.)
24 MR. LERNER: Q. You mentioned that --
25 earlier, you testified that American Lung Association of
26 California presently has approximately 1 million to one
27 and a half million donors.
28 A. Right.

51

1 Q. Is there a publication that -- or newsletter
2 that American Lung Association of California sends to
3 donors?
4 A. American Lung Association or ALA of
5 California?
6 Q. Well, is there one ALA of California sends?
7 A. Some of those donors will receive that news
8 magazine I referred to. And most of them receive direct
9 mail fund-raising appeals.
10 Q. Do these donors send -- Where do these donors
11 send donations?
12 A. Various offices. Most of the donations
13 either go to the local association -- some of it going
14 to fulfillment centers, if the local association prefers
15 their donations handled that way. Some go to the state
16 office or national office.
17 Q. So there are multiple fund-raising activities
18 aimed at this group?

19 A. Yes.
20 Q. Now, does American Lung Association of
21 California send information to donors pertaining to the
22 risks of environmental tobacco smoke?
23 A. Through the breath matters newsletter, but
24 not to all the donors in California. The local offices
25 that participate in that publication determine who in
26 their market -- who of the donors receive that
27 publication.
28 Q. You mentioned the circulation was 20,000 to
52
1 30,000?
2 A. Uh-huh.
3 Q. So are you saying that some of that
4 circulation is determined by the local affiliates?
5 A. Donors, correct.
6 Q. For donors?
7 A. Yes.
8 Q. So only a small portion of the donors would
9 receive the publication?
10 A. Correct.
11 Q. Are any educational campaigns undertaken with
12 regard to the donors?
13 A. Certainly through things like the news
14 magazine. They might read articles that were attributed
15 in -- I don't see all of the direct mail campaigns that
16 come out of the national office. So I'm assuming there
17 might be messages about our priorities in those direct
18 mail campaigns, but I can't speak directly to those.
19 Q. But in your role as vice president of
20 communications, you do not have responsibility for
21 direct mail campaigns to donors?
22 A. Correct.
23 Q. Who does have that responsibility?
24 A. I believe most of that falls to the board of
25 directors for an entity called MRS, which is the
26 nationwide donor base system or database system. It's
27 not just donors but predominantly. And I believe locals
28 work with that entity to determine which mailings go to
53
1 their area.
2 Q. Now, is American Lung Association of
3 California a Prop 99 contractor to your knowledge?
4 A. Yes, but that's not our sole source of
5 funding. Some of our funds come from Prop 99.
6 Q. To your knowledge, has ALA of California
7 received any Prop 99 funds for the purpose of providing
8 public education or awareness relating to the dangers or
9 health risks of ETS?
10 A. It can be included, but to my knowledge,
11 there isn't a specific project just about ETS.
12 Q. So there's a tobacco control project?
13 A. Yes. There are two statewide projects
14 currently funded.
15 Q. What statewide projects are funded by Prop
16 99?
17 A. One is called Educating Key Opinion Leaders
18 project, and the other is the Communications Assistance
19 project.
20 Q. I'm sorry. Could you read back the last
21 group?
22 THE REPORTER: "Communications Assistance
23 project."

24 THE WITNESS: And the third is -- Let me
25 define another type of our offices. The state office is
26 called the constituent. A lot of our local offices are
27 called affiliates, which are contracted by us. And then
28 there are other offices that are called branches, which

54

1 are part of the ALA of California legally. So they're
2 not contracted by us.

3 And the reason I'm telling you this
4 information is that the ALA of California Superior
5 County branch also has a contract; it's a Prop 99
6 project. So technically, that's another ALA of
7 California, and it's handled by the local branch.

8 MR. LERNER: Q. I see. With regard to the
9 Educating Key Opinion Leaders project, when did that
10 project begin?

11 A. Those first two projects I mentioned, that
12 funding cycle began July of '99 for a three-year period.

13 Q. Through June -- through the end of June 2002?

14 A. Yes.

15 Q. And did ALA of California hold any Prop 99
16 contracts for the prior funding cycle that ended -- at
17 the end of June 1999?

18 A. I believe so, the Superior County branch or
19 Superior branch contract.

20 Q. What contract is that?

21 A. I believe they're called a region much like
22 L.A. Link. They have the contract to coordinate Prop 99
23 coalition efforts for their market.

24 Q. That's in the Los Angeles area?

25 A. No. That was -- I was comparing it with L.A.
26 Link.

27 Q. Okay.

28 A. It's a similar type project.

55

1 Q. And what area does it cover?

2 A. I don't -- I will not recall all the
3 counties, but that office is in Chico, California.

4 Q. So it's northern counties?

5 A. Yes. Not all northern counties, but
6 including northern ALA counties.

7 Q. Does it include the Bay Area?

8 A. No.

9 Q. To your knowledge, does the Educating Key
10 Opinion Leaders project include any activities or cover
11 any activities relating to the dangers or health risks
12 of ETS?

13 A. It can.

14 Q. Have any such activities been pursued?

15 A. I'm not the project manager for that. So I
16 can't assume all the details of that.

17 Q. And do you know whether the Communications
18 Assistance project funds any activities that pertain to
19 the health risks of ETS?

20 A. That also can, but it varies by region.

21 Q. Who is the project leader or manager for
22 Educating Key Opinion Leaders?

23 A. Trisha Gibson.

24 Q. And where is she located?

25 A. She's also a home-based employee that reports
26 to the government relations office in Sacramento.
27 Actually, technically that project reports to Harriet.
28 But both Harriet and Paul are actively involved with

1 that.
2 Q. And who is the leader for the Communications
3 Assistance project?
4 A. Lynn Lauridsen. L-A-U-R-I-D-S-E-N.
5 Q. A male?
6 A. Female.
7 Q. Where does she work?
8 A. She's home based in the Central Coast area.
9 I believe Santa Cruz.
10 Q. To whom does she report?
11 A. To me.
12 Q. Is she one of the people that you mentioned
13 was on your staff or was your staff?
14 A. Yes. I'm sorry. I didn't include her.
15 Q. Who is the other person who is on your staff?
16 A. Missy Molari.
17 Q. Where is she based?
18 A. Oakland. And she's the support staff for me
19 and Harriet, the split position.
20 Q. When did Lynn Lauridsen begin reporting to
21 you?
22 A. July of last year when the contract started.
23 Q. And has she undertaken any activities that
24 relate to the health risks of ETS?
25 A. She could.
26 Q. Has she done so at this time?
27 A. I'm assuming so. Again, she -- There are so
28 many projects she works with. And since I don't get a

57

1 daily reporting from her, I would assume that a number
2 of ETS issues come up in her interactions.
3 Q. Do you know the amount of the contract for
4 the Communications Assistance project?
5 A. One and a half million dollars over the
6 three-year period.
7 Q. And the million and a half dollars covers
8 administrative expenses as well as what other costs?
9 A. Staff costs, project -- associated project
10 costs. It also includes three other full-time staff
11 members who are employed by other local lung
12 associations that are technically not ALA of California
13 employees. They have dual reporting to their local
14 office and to Lynn.
15 Q. And who are the other -- three other
16 full-time staff members?
17 A. Paul Fletcher, East Bay affiliate.
18 Jessica Krieg, K-R-I-E-G, the
19 San Diego/Imperial counties affiliate.
20 And Brian Peterson in the Superior branch.
21 Q. Where is the Superior branch?
22 A. In Chico, that same office I referred to
23 earlier.
24 Q. Now, have any of those three staff members
25 undertaken any activities as part of the Communications
26 Assistance project that pertain to health risks of ETS?
27 A. I think it's safe to assume that much like
28 Lynn, they have similar roles working with a number of

58

1 local projects.
2 Q. Does the Communications Assistance project
3 have any discrete programs itself at this point in time?
4 A. Well, the main purpose of the project is to

5 provide public relations technical assistance to local
6 Prop 99 funded projects. And that's why the -- because
7 that's so broad, it depends upon what the local need is.
8 Q. So in providing technical assistance
9 to public relations, do the activities tend to be
10 largely ad hoc?
11 A. Can you expound on that?
12 Q. I mean -- sure.
13 What do you mean by PR public assistance?
14 A. Public --
15 Q. Or technical assistance?
16 A. Technical assistance. Things like if local
17 programs would like someone to take a look at a draft
18 news release, if they want to brainstorm on potential
19 news conferences, things like that.
20 Q. So it's basically providing assistance to
21 local organizations for the kinds of activities that you
22 do for ALA of California?
23 A. Correct.
24 Q. Have you received any reports of the work
25 done by these three staff members?
26 A. Yes.
27 Q. And do those reports reflect any activities
28 that pertain to health risks of ETS?

59

1 A. Not that I recall, but it's possible.
2 (Whereupon, Defendant's Exhibit 365 A-G
3 was marked for identification.)
4 MR. LERNER: Q. We've marked as Exhibit 365
5 a document that was produced to us from the Encino
6 records of American Lung Association.
7 Now, do you maintain records at your home
8 office in Encino?
9 A. Yes.
10 Q. And these are American Lung Association
11 records?
12 A. This is out of the overall context. It looks
13 like it's from our national office.
14 Q. I'm not asking you about the specific --
15 A. I'm sorry.
16 Q. -- document.
17 I'm asking you particularly what records you
18 in general maintain of your activities at your office.
19 A. I have a number of files regarding the
20 projects I work on.
21 Q. And some of the -- the files that were
22 produced, you arranged to have those copied?
23 A. Yes.
24 Q. And you made a selection of files to be
25 copied --
26 A. Yes.
27 Q. In general, how did you formulate the -- or
28 determine which files were to be copied?

60

1 A. Generally, a file or a notebook that had its
2 entire contents in direct alignment with tobacco issues.
3 Q. So for example, what were the names of files
4 that you maintained that pertain to tobacco issues, for
5 example?
6 A. For example, smoke-free bars, Prop 99.
7 Q. Prop 10?
8 A. Prop 10.
9 Generally, those are examples of files. And

10 also, notebooks that might have come from our national
11 office.
12 Q. So you tend to organize your files by issue
13 or activity?
14 A. Uh-huh.
15 Q. Would that be fair?
16 A. Right.
17 Q. Did you produce any records from any files
18 that did not relate directly to tobacco issues?
19 A. I might have, but generally speaking, most of
20 them were called Tobacco, something in relation to
21 tobacco on the outside of them.
22 Q. You mentioned that you hold monthly
23 communications conference calls.
24 A. Yes.
25 Q. Did you provide any agendas or minutes for
26 the monthly communications conference call that may have
27 covered topics pertaining to environmental tobacco
28 smoke?

61

1 A. I might have, but I don't think I did.
2 Q. Do the monthly communications conference
3 calls deal with topics other than tobacco control?
4 A. Absolutely.
5 Q. So it's not necessarily -- or tobacco control
6 is not necessarily an issue that would be covered at
7 every conference call?
8 A. Not necessarily.
9 And that's the reason why -- if they weren't
10 included, the reason why.
11 Q. I see.
12 A. Because those files were definitely not in
13 the tobacco file.
14 Q. Did your files include any materials relating
15 to the L.A. Link committee?
16 A. Probably not, because those would be in the
17 L.A. office, if they kept such files. There might have
18 been some L.A. Link memos or materials in the tobacco
19 files, but I don't think I had any file called "L.A.
20 Link."
21 However, I think there was a file in the
22 California Lavender Smoke-Free project, as an example.
23 Q. That would have included materials pertaining
24 to ETS?
25 A. Right, in part.
26 Q. Do you attend any internal -- Have you
27 attended any internal meetings of personnel of American
28 Lung Association of California that pertain specifically

62

1 to ETS-related issues?
2 A. Not specifically. I mean, we have a number
3 of meetings. So the topic might come up, but --
4 Q. Are there staff meetings that you attend?
5 A. Uh-huh.
6 Q. Who attends staff meetings?
7 A. We have a -- You're talking specifically
8 about staff meeting with ALA of California?
9 Q. Yes.
10 A. There are quarterly staff directors meetings,
11 which are physical meetings, in Oakland. And we also
12 have a weekly conference call with our various offices
13 throughout the state, various offices of ALA of
14 California.

15 Q. Who leads the quarterly meetings of staff
16 directors in Oakland?
17 A. Ben.
18 Q. And who are the staff directors, or what do
19 you mean by staff directors?
20 A. The people who attend that meeting -- let's
21 see if I can remember everyone. Ben, his assistant
22 Sylvia. Do you want last names, too?
23 Q. Sure.
24 A. Goodin, G-O-O-D-I-N. I'm there. Paul
25 Knepprath. Harriet Charney. Elliott Worth, our
26 controller. Colleen Richardson, the executive director
27 for the California Thoracic Society. And Trisha Gibson.
28 Lynn Lauridsen. Ken Smith, who oversees our zero

63

1 emission vehicles project. Bonnie Holmes-Gen, also in
2 our government relations office. Amanda Bohl, B-O-H-L,
3 also in our government relations office on the Educating
4 Key Opinion Leaders project. I'm sure I'm forgetting
5 someone.

6 Q. Now, these staff meetings have been held
7 since you began with ALA of California?

8 A. Yes.

9 Q. Is the subject of environmental tobacco smoke
10 one that's been covered at these meetings?

11 A. I'm sure it has come up at some point, but
12 it's not -- those meetings are not ETS strategy
13 meetings. It may come up peripherally with our other
14 agenda items. They're more administrative.

15 Q. All right. And the weekly conference call --
16 now, are there agendas or minutes for the quarterly
17 staff director meetings?

18 A. Yes, both.

19 Q. Do you have copies of the agendas and
20 minutes?

21 A. Actually, the agenda we don't -- there is no
22 agenda. We submit agenda items, but there's no formal
23 hard copy agenda.

24 Q. Are there minutes?

25 A. Yes.

26 Q. And do the minutes reflect what happened at
27 the meetings?

28 A. Yes.

64

1 Q. So if there were ETS-related discussions,
2 they would be found in the minutes?

3 A. Yes.

4 Q. Did you review any of those minutes?

5 A. I receive copies of them, yes.

6 Q. In connection with the production for this
7 case, did you review any of those minutes to see if they
8 contain any information relating to ETS?

9 A. When you say "review," do you mean before
10 they're issued, or did I receive a copy of them?

11 Q. No, no. Did you have any of those minutes
12 copied for the production in this case?

13 A. Oh, I highly doubt it.

14 Q. You didn't look through them to see if they
15 contained anything relating to the topics?

16 A. I'm almost positive I didn't include, again,
17 because they weren't in my tobacco file specifically.

18 Q. Are there minutes for the weekly conference
19 calls?

20 A. No, nor are there agendas for those meetings.
21 Q. Have there been separately held ETS strategy
22 meetings?
23 A. Within the ALA of California?
24 Q. Yes.
25 A. Not that I recall.
26 Q. Have you attended any ETS strategy meetings
27 while you've been with ALA of California?
28 A. Yes.

65

1 Q. What ETS strategy meetings have you attended?
2 A. I should have mentioned this previously. It
3 just rang a bell. I'm on the ETS work group for the
4 Department of Health Services, which those meetings are
5 conference calls with no regular schedule.
6 Q. And you serve on that work group as a
7 volunteer or as part of the Prop 99 contract?
8 A. I volunteer. I was on that group before the
9 Prop 99 project that I oversee, before that contract
10 came in.
11 Q. When did you begin serving on the ETS work
12 group?
13 A. I won't remember the exact date, but it was
14 after I started working with ALA of California.
15 Q. Do you remember what year?
16 A. I don't think it was the first year I started
17 working with ALA of California. It was probably in '98
18 at some point.
19 Q. How many meetings of the ETS work group have
20 you attended?
21 A. I've probably been on approximately three
22 conference calls.
23 Q. When were the three meetings that you
24 attended or the three conference calls you attended
25 held?
26 A. I won't remember the exact dates, but I'd say
27 probably two last year and I think one this year. Maybe
28 one in '98. I really don't remember.

66

1 Q. What is the function of the ETS work group as
2 you understand it?
3 A. To identify and discuss current and future
4 ETS issues.
5 Q. And are these strategy meetings?
6 A. You could call them that.
7 Q. And have you undertaken any particular
8 activities as a result of your participation in the ETS
9 work group?
10 A. Perhaps peripherally. But a lot of what
11 happens there is brainstorming, looking at issues. But
12 I wouldn't say that it was a project I ended up doing as
13 a direct result of those meetings.
14 Q. Are you aware of any activities that have
15 been undertaken by anyone as a result of the
16 brainstorming or strategizing that's gone on at the
17 conference calls you attended?
18 A. I'm assuming that the information that comes
19 up in those meetings are used by various people on the
20 calls. Again, it's informational. And some people
21 might fold those ideas into existing or new campaigns or
22 projects.
23 Q. Have any campaigns or projects been discussed
24 at those meetings that you attended?

25 A. In the broad sense of the term.
26 Q. What specifically by way of campaigns or
27 projects do you recall being discussed?
28 A. For example, smoke-free bars.

67

1 Q. Prop 10?
2 A. I don't think Prop 10 has been on those
3 calls. Possibly, but I don't recall that.
4 Q. Do you recall any discussion of advertising?
5 A. Not that I recall.
6 Q. What else besides smoke-free bars do you
7 recall that was discussed?
8 A. I think that's been the major focus of those
9 calls, not that other issues haven't come up, but given
10 the current nature of that issue.
11 Q. Has there been any discussion at those ETS
12 work group meetings concerning smoke-free homes or
13 apartments?
14 A. I'm sure it's come up peripherally.
15 Q. Has there been any discussion concerning
16 smoke-free cars?
17 A. I'm sure that's come up peripherally as well.
18 Q. Has ALA of California undertaken any
19 activities with regard to the issue of smoke-free homes
20 or apartments?
21 A. I'm sure the topic has come up, but that I'm
22 aware of we have no formal program.
23 Q. Has there been any activities undertaken by
24 ALA of California with regard to issue of smoke-free
25 automobiles?
26 A. Again, I'm sure the topic has come up, but we
27 don't have programs directly addressing that.
28 Q. When you say you're sure the topic has come
up, what do you recall?

68

1 A. Just because it's a topic that people are
2 talking about. There might have been some reports on.
3 So it just comes up as part of conversation.
4 Q. As far as you know, the American Lung
5 Association has no goals, formally articulated goals,
6 with regard to smoke-free homes or apartments or cars?
7 A. No.
8 I do know that some of our local offices are
9 addressing the topic, but I won't recall which ones and
10 whether or not it's directly through Prop 99 or not.
11 Q. And do they receive any assistance -- Have
12 the local offices received assistance from you in that
13 regard?
14 A. How do you define assistance?
15 Q. Have you worked with them on the topic of
16 smoke-free houses or apartments?
17 A. I think in the past year we might have -- I'm
18 almost positive we put a related article about -- I
19 think it was our East Bay affiliate on -- their work
20 on -- it might have been smoking around your kids in a
21 house. I don't remember the exact details, but I
22 believe there's a -- I'm sure we can find an article on
23 that.
24 Q. Do your files or the files that you maintain
25 include copies of newspaper articles and editorials
26 pertaining to ETS?
27 A. Some of them, yes.

69

1 Q. And those are articles that you pulled from
2 the newspaper?
3 A. Either that I pulled or that people sent me
4 or that I received through other sources.
5 Q. And are those articles that contain stories
6 that you helped to place or arrange?
7 A. Sometimes, but not all the time.
8 Q. So they're informational -- Sometimes they're
9 informational, and sometimes they reflect the work that
10 you have done?
11 A. Right.
12 Q. I'd like you to please take a look at Exhibit
13 365, which contains a number of subparts.
14 Mr. Weisser, before we turn to that document
15 specifically, I just want to clarify a couple of things.
16 How many volunteers are there that work with American
17 Lung Association of California?
18 A. I don't know the exact number.
19 Q. Can you estimate?
20 A. Are you categorizing people who are formally
21 volunteers of ALA of California or the number of
22 volunteers that might work with lung associations as
23 well in California?
24 Q. Well, that's what I'm trying to make a
25 distinction about.
26 A. Yeah.
27 Q. Let's turn to the affiliates first. How many
28 affiliates are there in California?

70

1 A. There are 15 local lung associations. That
2 includes affiliates and branches.
3 Q. What is the difference between an affiliate
4 and a branch?
5 A. An affiliate is contracted by the ALA of
6 California for a specific territory. Branches are
7 extensions of ALA of California; they don't hold
8 separate contracts.
9 Q. So how many affiliates are there?
10 A. I believe there are 11. And we have four
11 branches.
12 Q. Where are the branch offices located?
13 A. Branches are in Kern County, Superior, Chico.
14 That's one and the same, Chico and Superior. Redwood,
15 which is in Santa Rosa. And Valley Lode in Stockton.
16 Q. And the affiliates which are separately
17 contracted are themselves 501C3 organizations?
18 A. Correct.
19 Q. Separate from ALA of California?
20 A. Correct.
21 Q. And where are the affiliates located? You
22 mentioned Los Angeles.
23 A. Right. There's Los Angeles. San Diego.
24 I should also mention that there are some
25 affiliates that have regional offices that are
26 essentially like branches are to the state office. So
27 the San Diego affiliate also has a branch in Imperial
28 County.

71

1 The Inland County's office in San Bernardino
2 is an affiliate. Orange County. Central Coast in
3 Monterey. San Francisco and San Mateo counties in Daly
4 City. East Bay in Oakland. That's not 11 yet.
5 Sacramento. Immigrant Trails in Sacramento. How many

6 is that so far?
7 MS. THRO: Eight.
8 THE WITNESS: Eight.
9 MR. SIPOS: This is a test.
10 THE WITNESS: Yes, it is.
11 MR. LERNER: Q. So is there something --
12 A. I have a list here if you want me to pull it
13 out.
14 Q. Is there something in Fresno or Central
15 Valley?
16 A. Yes. Central Valley is in Fresno. Central
17 California, actually.
18 Q. Is there something in the mountains?
19 A. Sacramento. Immigrant Trails covers a lot of
20 that. Superior, Valley Lode. Those are the branches,
21 Superior and Valley Lode.
22 Q. Now, getting back to the question of
23 volunteers, you mean to say that the affiliates have
24 volunteers separate from ALA of California?
25 A. Right. For example, the state has
26 committees. The state has a board much like the local
27 organizations. They have local boards. They have local
28 committees.

72

1 Q. And are there local donors as well?
2 A. All donors are considered local.
3 Q. But the number of donors you mentioned
4 earlier was comprised of all donors of affiliates as
5 well as ALA of California?
6 A. Right. That's all donors statewide.
7 Q. Now, how many volunteers are there, or do you
8 know any figures pertaining to the number of volunteers
9 in California?
10 A. I recently saw something in the past couple
11 of weeks, but I won't recall the number. But it is at
12 least 1500.
13 Q. And these are volunteers with affiliates as
14 well as the statewide organization?
15 A. Right. Not just board members and committee
16 members but volunteers at asthma camps, other program
17 activities. And I'm sure that number is nowhere near
18 correct.
19 Q. With reference again to Exhibit 365, do you
20 recognize this document?
21 A. As I mentioned earlier, I believe this is
22 from one of our notebooks. This looks like it's
23 probably from our national office regarding advocacy of
24 priorities.
25 Q. This is one of the documents that came out of
26 the Encino files that were produced to us.
27 A. Uh-huh.
28 Q. Is this a document you've reviewed in the

73

1 past?
2 A. I'm sure I've looked at it. But again, I
3 can't tell you the exact source because I don't see the
4 notebook it came from.
5 MR. SIPOS: When you say you've looked at it,
6 have you read it cover to cover in the past?
7 THE WITNESS: I'm sure I have not read it
8 cover to cover. I'm sure I glanced at it. This looks
9 like it's from a reference piece.
10 MR. LERNER: Q. Do you recall when you

11 received this document?
12 A. I don't recall when I received this.
13 Q. Do you recall reviewing portions of this
14 document at any time?
15 A. I'm sure I have glanced through it.
16 Q. Do you use it as reference material?
17 A. Occasionally. Very rarely.
18 Q. Will you take a look at Exhibit 365 B.
19 That's the second portion, second clipped portion, which
20 is called Position Statements.
21 A. Uh-huh.
22 Q. Are you familiar with any ALA position
23 statements?
24 A. Yes.
25 Q. And do you see there's a position statement
26 concerning clean indoor air?
27 A. Uh-huh.
28 Q. And are you familiar -- Have you become
74
1 familiar in the past with the ALA position statement on
2 clean indoor air?
3 A. I knew it existed.
4 Q. Did you use it in any context in your work as
5 communications director?
6 A. Used it in -- Do you want to define how
7 you -- I'm sure I have glanced at it. I know it
8 existed. I don't believe I used it in materials.
9 Q. If you turn to the page with the Bates number
10 at the bottom, ALA 502.
11 A. Uh-huh.
12 Q. Which is page 6 of the position statements,
13 which deals with clean indoor air.
14 A. Uh-huh.
15 Q. This is the position statement that you
16 mentioned you've glanced at in the past; is that
17 correct?
18 A. Oh, yes.
19 Q. And with regard to the portion of this
20 position statement called Policy Goals, to your
21 knowledge has the American Lung Association of
22 California adopted any of these policy goals as its own
23 goals?
24 A. I would say generally in relation to
25 smoke-free workplaces for the protection of all
26 employees, specifically in relation to AB 13 in
27 California.
28 Q. So with regard to -- You're referring to the
75
1 point under State and Local, which says, "Enactment and
2 enforcement of legislation to eliminate the exposure of
3 children and adults to environmental tobacco smoke, with
4 emphasis on work sites"?
5 A. Correct.
6 Q. And that was via AB 13?
7 A. Right, as one example.
8 Q. Are there other examples of that policy?
9 A. Specifically, within AB 13, smoke-free bars
10 again.
11 (Whereupon, Defendant's Exhibit 366
12 was marked for identification.)
13 MR. LERNER: Q. Exhibit 366 appears to be a
14 letter to Dave Gold dated November 1, 1994 on the
15 letterhead of American Lung Association of Los Angeles

16 County. Have you seen this letter before?
17 A. It looks familiar.
18 Q. Who is Dave Gold?
19 A. I don't know of his exact title. I believe
20 he's owner of 99 Cent Only stores.
21 Q. And this letter appears to refer to a meeting
22 that you had with Mr. Gold?
23 A. I don't -- That's right. He stopped by the
24 office, yes.
25 Q. And at the time, were you doing some work on
26 the No on 188 campaign?
27 A. Yes.
28 Q. What was Prop 188?

76

1 A. Prop 188 would have reversed smoke-free
2 workplace ordinances throughout California.
3 Q. Did the American Lung Association of
4 California undertake any activities in support of No on
5 188 position?
6 A. Yes. And again, this was when I was employed
7 by the Los Angeles County affiliate.
8 Q. And I understand that. But did the American
9 Lung Association of California participate in the No on
10 188 campaign?
11 A. Yes.
12 Q. What was being done by American Lung
13 Association and its affiliates to oppose Prop 188?
14 A. Various public awareness campaigns.
15 Q. When did these public awareness campaigns
16 begin?
17 A. I don't recall the exact date, but I would
18 say roughly fall of '94.
19 Q. Did the public awareness campaigns include
20 information pertaining to the health risks of
21 environmental tobacco smoke?
22 A. Yes.
23 Q. Can you recall generally what these public
24 awareness campaigns consisted of?
25 A. I believe some of the messages were helping
26 people see both sides of the support and opposition to
27 Prop 188, tobacco companies in comparison to health
28 organizations, and probably focused on the effectiveness

77

1 of smoke-free workplace ordinances and regulations.
2 Q. Do you recall what information was made
3 available to the public with the assistance of the
4 American Lung Association of California and its
5 affiliates that pertain to the risks of ETS?
6 A. In relation to this campaign you mean?
7 Q. Yes.
8 A. If you can restate that.
9 Q. Sure.
10 A. Specific information that was provided?
11 Q. Right.
12 A. I'm sure there were -- I know there were
13 conference calls to coordinate statewide activities, and
14 more than likely messages for consistency.
15 Q. Does the American Lung Association of
16 California have any records that show the messages that
17 were distributed to the public in 1994 in the No on 188
18 campaign that would pertain to the health effects of
19 ETS?
20 A. I don't know. But they could be in

21 existence. Again, I wasn't working for the
22 organization -- for the state office.

23 Q. Did anyone other than you search for records
24 in response to the deposition subpoena?

25 A. Yes.

26 Q. Who else looked for records in response to
27 the subpoena?

28 A. I don't know the entire list, but I believe
78

1 Ben Abate, Paul Knepprath, Harriet Charney, and I think
2 Colleen Richardson from California Thoracic Society. I
3 don't know if I saw the overall list of people, but --

4 Q. Do you know whether people were looking for
5 documents within any time frames or --

6 A. I believe part of the subpoena included the
7 time frame.

8 Q. How long has Mr. Abate been with the
9 organization? Or is it Dr. Abate?

10 A. Yeah. It's Dr. Abate. Ben. Approximately
11 20 years.

12 Q. Has long has Paul been with the organization?

13 A. With the state office, I believe about four,
14 maybe five years. He used to work for the local
15 Sacramento affiliate before he went to the state office.

16 Q. How long has Harriet Charney been with the
17 organization?

18 A. I believe -- I'd say also about four or five
19 years. Closer to four.

20 Q. Does the American Thoracic Society to your
21 knowledge undertake any public information campaigns
22 pertaining to ETS?

23 MR. SIPOS: Wait a minute. I mean, that's
24 going way outside the scope of the subpoena. He's not
25 here to testify on behalf of the Thoracic Society.

26 MR. LERNER: He mentioned that they were
27 affiliated with the Thoracic Society.

28 MR. SIPOS: Yes, but that's not the scope of
79

1 your subpoena as to what activities the Thoracic Society
2 undertakes.

3 MR. LERNER: Q. I'll just ask it another
4 way. Has American Lung Association of California
5 assisted any other organizations with any public
6 information campaigns pertaining to the health risks of
7 ETS?

8 A. Yes.

9 Q. That's one of the methods that's been
10 utilized to get the message out of the health risks of
11 ETS?

12 A. Yes.

13 Q. What other organizations has American Lung
14 Association of California assisted in that regard?

15 A. I couldn't give you a complete list because
16 we work with so many organizations addressing ETS.

17 Q. Okay. Was American Thoracic Society one of
18 those organizations?

19 A. California Thoracic Society.

20 Q. Okay. What other organizations can you
21 recall that have been assisted by American Lung
22 Association of California to get the public information
23 about the health risks of ETS?

24 A. It's kind of a broad term because we
25 participate in coalitions, so everyone is assisting

26 everyone. It's not the lung association in the lead.
27 We are a participant in.

28 Q. What coalitions are you referring to?

80

1 A. It's a loose term because it depends upon the
2 project. Sometimes the lung association will work with
3 the American Heart Association, American Cancer Society,
4 Americans for Nonsmokers' Rights. Those are just a few
5 examples of the types of groups we will work on. But
6 there isn't one coalition for all related issues.

7 Q. Have you participated in any coalitions, as
8 you are using that word, with the California Thoracic
9 Society in relation to this public information
10 pertaining to ETS?

11 A. I would say public information on the more
12 specific side, I don't think they've been involved in
13 huge campaigns, but they might get calls from people who
14 want to quit smoking, for example, or wanting to know
15 about nicotine replacement therapies, more of the
16 medical-related questions that come in.

17 Q. What issues has American Lung Association of
18 California participated in a coalition on involving
19 Americans for Nonsmokers' Rights?

20 A. I won't remember all the exact campaigns, but
21 I will assume -- I don't want to guess.

22 Q. What ones do you recall? Don't guess. I
23 don't want you to do that. Smoke-free bars?

24 A. Again, smoke-free workplaces, smoke-free
25 bars. I think probably that came up. But again,
26 without going through my files, I would be
27 uncomfortable.

28 (Whereupon, Defendant's Exhibit 367

81

1 was marked for identification.)

2 MR. LERNER: Q. We earlier discussed the
3 smoke-free apartments issue.

4 A. Uh-huh.

5 Q. Have you taken a look at Exhibit 367?

6 A. Yes.

7 Q. Does this refresh your recollection as to
8 when you worked on that issue?

9 A. Yes, in the broad sense of the term "worked
10 on."

11 Q. Right. Now, Exhibit -- the page marked ALA
12 1307 is a memo you wrote to Tony and Paul?

13 A. Right.

14 Q. You sent them some information and clippings
15 concerning smoke-free apartments and condos?

16 A. Yes.

17 Q. Who is Tony?

18 A. Tony is the retired vice president of
19 government relations. He retired last -- the end of
20 last year.

21 Q. His full name?

22 A. Anthony P. as in Paul Najera, N-A-J-E-R-A.

23 Q. And Paul is Paul Knepprath?

24 A. Correct.

25 Q. I noticed that this indicates that there were
26 nine pages attached. And I am not sure I've excerpted
27 all the correct pages or even have all of them there.
28 But are the pages that are included in the exhibit

82

1 following the fax cover some of the materials that you

2 sent to them?
3 MR. SIPOS: Do you want to look at it, Karen?
4 Karen, do you need another copy?
5 THE WITNESS: I mean, I can't -- I'm
6 acknowledging I sent this. Whether or not this is the
7 exact fax, I can't tell you, or not in its entirety, but
8 it looks like it's there completely.
9 MR. LERNER: Q. What specifically did you do
10 with regard to the smoke-free apartments issue in
11 connection with the correspondence you had with Esther
12 Schiller?
13 A. This looks like one of many informational
14 items. Again, when there are topics that are brought to
15 our attention, we'll share them so we're aware of
16 current news issues. And it appears that that -- this
17 is one of those -- an example of that type of
18 information sharing.
19 Q. The last two pages of this exhibit is a --
20 appears to be a letter to you dated November 6, 1998,
21 from Esther Schiller; is that correct?
22 A. Yes.
23 Q. And this is a document you received in the
24 regular course of business?
25 A. Correct.
26 Q. You read it, and you reviewed it?
27 A. Yes.
28 Q. And did you take any action on behalf of

83

1 American Lung Association of California with regard to
2 the smoke-free apartments issue at the time?
3 A. The action that I took is to share the
4 information.
5 Q. So there have been no programs that ALA of
6 California has adopted that pertain to smoke-free
7 apartments?
8 A. Well, actions. I took this action of sharing
9 the information, so I took that action.
10 Q. Do you know whether Paul Knepprath has done
11 anything in relation to the smoke-free apartments issue?
12 A. We've certainly discussed it, but we have no
13 formal program addressing this.
14 (Whereupon, Defendant's Exhibit 368 A-C
15 was marked for identification.)
16 MR. LERNER: Q. Exhibit 368 is a collection
17 of materials that may or may not go together. So I'm
18 going to ask you about them.
19 Do you recognize Exhibit 368 A?
20 A. Yes.
21 Q. What are these documents?
22 A. It looks like it's part of the -- just policy
23 background, briefing of documents about the tobacco
24 settlement nationwide from our national office in D.C.
25 Q. This is information you received from the ALA
26 national office in October of 1997?
27 A. Yes. Whether it was -- again, I don't see
28 the exact file. I don't know if it was in a file or in

84

1 one of the reference notebooks we addressed earlier.
2 Q. Do you recall whether you took any action to
3 publicize the positions of the American Lung Association
4 that are reflected in Exhibit 368 A?
5 A. We addressed the settlement issue, yes.
6 Q. What was done by ALA of California to address

7 the settlement issue?
8 A. I won't remember the exact details, but I'm
9 sure we communicated internally through memos and/or our
10 internal newsletters, sent out news releases, basic
11 support, communications support, like we would any other
12 activity of priority.
13 Q. So that that would have included media
14 relations work by you, for example?
15 A. Yes.
16 Q. And if you take a look at page -- the second
17 page of this exhibit, 368 A, if you note under the top
18 heading Major Flaws, there's a bullet point that says,
19 "The American Lung Association sees the following major
20 flaws in the proposed tobacco settlement." And then the
21 next to the last bullet point says, "Workers would not
22 be adequately protected from exposure to environmental
23 tobacco smoke."
24 Do you remember that as a subject that was
25 publicized as part of the ALA's position?
26 A. I won't remember. There's been so much media
27 exposure on this issue, I couldn't tell you if that
28 message was included or not.

85

1 Q. And by media exposure around that issue, you
2 mean relating to the tobacco settlement?
3 A. Yes.
4 Q. With regard to the Exhibit 368 B, that's a
5 testimony that was given by Larry Lebowsky, who is, I
6 take it, a board member of the American Lung Association
7 of California?
8 A. And of Los Angeles County. He has a double
9 board member responsibility.
10 Q. Do you recall whether you arranged any
11 publicity for this testimony by Mr. Lebowsky?
12 A. I don't recall exactly. I'm assuming we did
13 a news release around this and probably included some of
14 his quotes from his testimony. But again, I can't
15 absolutely document that without seeing a news release.
16 Q. And Exhibit 368 C is a memorandum from you.
17 I take it this is what you mean by an internal
18 memorandum?
19 A. Yes.
20 Q. And did you arrange any publicity for the
21 American Lung Association's reaction to the multi-state
22 tobacco settlement as reflected in this memorandum?
23 A. Again, without my records, I can't tell you
24 if I did. I think it's safe to assume I was involved in
25 some media activities around this issue.
26 (Whereupon, Defendant's Exhibit 369
27 was marked for identification.)
28 MR. LERNER: Q. Do you recognize Exhibit

86

1 369?
2 A. Yes.
3 Q. Is the first page a memorandum that you wrote
4 and sent to Executive Directors -- the other addressees
5 indicated?
6 A. Yes, it is.
7 Q. And that was done in the regular course of
8 business on about November 13, 1998?
9 A. Yes.
10 Q. What was your purpose in distributing -- and
11 this memo was basically a distribution memo providing

12 the addressees with information about the Social Will
13 Index?
14 A. Uh-huh.
15 Q. What's your understanding of what the Social
16 Will Index is?
17 A. Attitudes, indicators about tobacco control
18 issues generally and related ETS issues specifically and
19 AB 13.
20 Q. And specifically, this was -- did you
21 understand this to be a showing of -- or an indicator --
22 Social Will Index to be an indicator of public support
23 for smoking restrictions that would reduce or eliminate
24 exposure to environmental tobacco smoke?
25 A. It could have indicated support for it but
26 more of an overall gauge statewide. So it could have
27 indicated otherwise, too.
28 Q. What was your reason for distributing this to

87

1 executive directors and staff?
2 A. As an informational item because it includes
3 county-specific information throughout California.
4 Q. And is this type of information -- or the
5 type of information included in the Social Will Index
6 useful in formulating communications programs or media
7 relations?
8 A. It can be. It's one of many types of
9 information that we work from.
10 Q. And did you make any use of the information
11 contained in this document?
12 A. Other than sharing with our local offices,
13 no.
14 Q. The third category of information covered by
15 the deposition subpoena is evaluations and surveys
16 relating to the effectiveness of efforts of the American
17 Lung Association to inform, warn or educate residents of
18 dangers to exposure to ETS.
19 A. Yes.
20 Q. Can you tell me generally what knowledge you
21 have on the question of evaluations or -- such
22 evaluations or surveys?
23 A. The fact that various evaluations and surveys
24 have been conducted, whether -- and I guess when I
25 was -- I was interpreting this as not only ALA of
26 California but also just statewide tobacco issues. And
27 there are a number of such instruments out there.
28 Q. Which ones are you familiar with?

88

1 A. Certainly a number of them conducted by
2 Department of Health Services, Tobacco Control Section,
3 the example we just reviewed from the Healthy Cities
4 Project, those types.
5 Q. Has American Lung Association commissioned or
6 conducted any surveys or evaluations?
7 A. Pertaining to ETS specifically, not that I'm
8 aware of.
9 Q. Has there been -- Has it commissioned or
10 conducted any surveys or evaluations that would
11 generally cover the subject of exposure to environmental
12 tobacco smoke?
13 A. Not that I'm aware of.
14 Q. Has the American Lung Association of
15 California ever done any internal evaluations of its
16 efforts to inform people about the dangers of ETS?

17 A. Not that I'm aware of.
18 Q. Is American Lung Association of California
19 familiar with an organization called Breath or Breathe?
20 A. Breath is a Prop 99 project conducted through
21 the ALA of East Bay, one of our affiliates. The ALA of
22 California does not hold that contract.
23 Q. Does ALA of California work with Breath on
24 any projects?
25 A. Yes.
26 Q. What projects are those?
27 A. Well, I should reframe that. We work with
28 them. We've had conference calls with them talking

89

1 about smoke-free bars. As another example, they
2 participate in the ETS work group I referred to
3 previously. But in terms of formal projects, it's more
4 of, again, information sharing, brainstorming on the
5 issue.
6 Q. In September of 1999, did you attend a
7 symposium called "Clearing the Air in the New
8 Millennium" sponsored by the California Department of
9 Health Services?
10 A. Yes.
11 Q. And that was held at the San Diego Marriott,
12 Mission Valley?
13 A. Yes.
14 Q. And at that -- for want of a better word I'll
15 call it symposium, did you present a breakout session
16 topic called Communicating the Message?
17 A. Yes. I was one of a few co-presenters.
18 Q. And you did that with Lynn Lauridsen?
19 A. Right.
20 Q. I have a copy of the program materials,
21 and -- which came from your records. And there was a
22 tab for your breakout session, but I didn't see any
23 materials behind the tab. Were any of your -- Did you
24 provide any materials for the program booklet at the
25 time for its publication?
26 A. No, I didn't, nor did I at the actual
27 session. It was a hands-on working session.
28 Q. This session took place for about an hour on

90

1 the afternoon of September 23rd, 1999?
2 A. Yes. We offered this particular workshop
3 three times. So there were three separate hours
4 throughout the workshop.
5 Q. And did you provide materials to people at
6 the workshop?
7 A. No.
8 Q. And was that a good word for it, "workshop"?
9 A. Sure.
10 Q. What presentation did you make at the
11 workshop sessions?
12 A. I believe it was troubleshooting,
13 brainstorming, challenges, successes that local programs
14 were having working with the media.
15 Q. Did you have any notes from which you spoke?
16 A. I'm sure I had some -- Well, I'm not sure.
17 It's possible. But because it was designed as an
18 interactive, I wanted to hear from them what challenges
19 they were facing. And having it designed as such, I
20 knew what the outcome would be. Just to engage people
21 that way.

22 Q. I see. So it was really a kind of roundtable
23 discussion that you moderated?
24 A. Correct.
25 Q. And Lynn was also a moderator?
26 A. Yeah. We broke the sessions out into three
27 groups.
28 And Matthew LeVeque from Rogers & Associates

91

1 was the third facilitator.
2 Q. How many people attended your breakout
3 sessions, that is, your workshops, Communicating the
4 Message?
5 A. In each of the three hour-long sessions, I'd
6 say there were roughly 30 in each session.
7 Q. And those were divided into groups of 10?
8 A. Approximately. They self-selected which
9 breakout they wanted to go.
10 Q. Did you lead a breakout that dealt with any
11 particular topic?
12 A. No. The session was -- it was broadly
13 framed. So they could get out of it what they needed
14 to.
15 Q. And did you attend some of the general
16 sessions yourself?
17 A. Yes.
18 Q. And who are the people who attended your
19 breakout, your workshops?
20 A. I couldn't tell you their names. I would say
21 generally it was a mix of locally funded Prop 99
22 projects throughout the state.
23 Q. So they are project coordinators or
24 administrators?
25 A. Right. I'm sure a mix of different staff
26 working on the projects.
27 MR. LERNER: We'll break.
28 (Recess taken from 1:05 to 1:28 p.m.)

92

1 (Whereupon, Defendant's Exhibit 370
2 was marked for identification.)
3 MR. LERNER: Back on.
4 Q. So I take it in your work in public
5 relations, you tend to work on topics one by one as they
6 arise. Does that tend to be generally --
7 A. From time to time depending upon the day.
8 Q. It isn't necessarily organized or a
9 preordained plan?
10 A. Well, depending upon the campaign.
11 Q. Depending upon the campaign?
12 A. Right.
13 Q. So what I'd like to do right now is to show
14 you a number of documents which appear to relate to
15 different topics pertaining to environmental tobacco
16 smoke or smoke-free, whatever.
17 A. Okay.
18 Q. And ask you to identify the circumstances for
19 which they were used or originated.
20 Exhibit 370 is a media advisory and an
21 attached news release as to which you're listed as a
22 contact.
23 A. Uh-huh.
24 Q. And then there's attached a statement of Lou
25 Moench, owner of Father's Office. I'd like you to tell
26 me, is this a document that you prepared?

27 A. When I was employed by the ALA, Los Angeles
28 County, yes.

93

1 Q. So these were --

2 A. I need to clarify that. I prepared the media
3 advisory and the news release but not the testimony or
4 statement of Lee Moench.

5 Q. And these documents were prepared when you
6 were with American Lung Association of Los Angeles
7 County?

8 A. Yes.

9 Q. So these were examples of types of work you
10 did as director of communications?

11 A. Yes.

12 Q. And this is the similar type of work that
13 you've done at American Lung Association of California
14 then?

15 A. Correct.

16 Q. And did?

17 A. In relation to tobacco and ETS. My work is
18 much broader than this.

19 Q. Correct. Thank you.

20 Now, did you do any work with Lou Moench
21 since you've been at American Lung Association of
22 California?

23 A. Yes.

24 Q. What work have you done with him at American
25 Lung Association of California?

26 A. Similar type media opportunities, setting up
27 for interviews when appropriate.

28 Q. And why is Mr. Moench a person that you made
94
1 available for interviews?

2 A. He was our role model in terms of smoke-free
3 bars.

4 Q. And his bar has been smoke-free for some
5 period of time?

6 A. Yes.

7 Q. And did you arrange an interview with
8 Mr. Moench for the WALL STREET JOURNAL?

9 A. I recall that article. I don't recall if I
10 had involvement with that.

11 Q. Now, in Exhibit 370, on the media advisory
12 under the Why heading, it states, "The American Lung
13 Association is launching a campaign to ensure that bar
14 employees are provided with healthy, smokefree
15 workplaces" and so forth.

16 Does the reference to American Lung
17 Association pertain only to American Lung Association of
18 Los Angeles County, or was this a broader campaign that
19 involved the statewide organization?

20 A. Well, smoke-free bars certainly is a
21 statewide issue. This particular news conference was
22 held in Los Angeles County. Sometimes "American Lung
23 Association" was used synonymously with a local or
24 statewide office of the American Lung Association. Part
25 of our contractual agreement is that offices can use
26 either or. I don't know if you're looking for
27 clarification about why in this case it was the generic
28 reference.

95

1 Q. That's what I was looking for. Was this
2 generically meant, one or the other?

3 A. Right.
4 Q. And perhaps both depending upon the
5 circumstances?
6 A. In this case, the national office was not
7 involved in this news conference.
8 Q. Was the state office involved?
9 A. I'm assuming I copied them on this. But
10 also, because I had done a satellite feed to support
11 this, I'm assuming we notified a number of offices, if
12 not all of them in California, if they wanted to take
13 advantage of that.
14 Q. So a number of -- on smoke-free bar issues,
15 there were statewide activities, and there were some
16 local activities?
17 A. Yes.
18 Q. When you arranged -- What do you mean by a --
19 A. Satellite feed?
20 Q. Satellite feed, yeah.
21 A. That's a service that's provided to media
22 where they can downlink; they can use visuals to weave
23 into their stories if they either can't make it to a
24 news conference or if they made it to a news conference
25 and they need to use other footage. It's a
26 supplemental.
27 Q. So that's for television?
28 A. Radio can pull it down, too, if they just

96

1 want audio. But usually television will work from it.
2 Q. Do you know whether the satellite feed was in
3 effect for the Lou Moench press conference, was in fact
4 utilized?
5 A. It might have been. I don't know. I don't
6 know. I don't recall the exact media coverage. I know
7 we did generate quite a bit of coverage for this news
8 conference.
9 Q. Typically when you arrange for a satellite
10 feed, how do you work with other affiliates or the state
11 office of the American Lung Association of California?
12 A. You're talking generally or in relation to
13 this?
14 Q. I'm talking generally.
15 A. Generally, we set up the satellite feed; we
16 let local offices know of its availability. We notify
17 stations. Local offices notify stations of its
18 availability.
19 Q. So there's a customary procedure for getting
20 the word out?
21 A. Well, there isn't a policy or procedural
22 document that indicates what that is, but we generally
23 let it be known that it's available.
24 Q. Right. And then other people who are within
25 the American Lung Association of California -- that's
26 affiliates -- spread the word and in some fashion?
27 A. Right. And sometimes national would make
28 them available. And technically, it's available for any

97

1 station that wants to pull it down.
2 Q. When you arrange a satellite feed -- and I'm
3 speaking of your work at American Lung Association of
4 California, how do you determine whether that feed that
5 is generated is a success?
6 A. It's difficult because we don't have a budget
7 to track every placement. Sometimes we call a news

8 monitoring service. Other times, it's word of mouth or
9 a combination.
10 Q. Have you ever obtained news clippings of
11 programs that have used satellite feed?
12 A. Sometimes we'll get a written summary from a
13 news monitoring service, but we don't get clips of
14 everything. It's just too expensive.
15 Q. So your evaluation of the success of a
16 satellite feed is based on your personal observations or
17 impressions?
18 A. Well, if I know of a news report that's
19 resulted or in the news monitoring service reports or
20 the lung association's details of related coverage.
21 Q. So did you gauge that Lou Moench's appearance
22 at this particular press conference was a successful
23 event?
24 A. Yes.
25 Q. And what are your criteria for that?
26 A. The number of media attending the news
27 conference, resulting stories, whether it's electronic
28 or print.

98

1 Q. And you can base that judgment on your
2 experience and in public relations?
3 A. Uh-huh.
4 Q. Okay. Do you recall how many people happened
5 to attend this particular press conference?
6 A. I don't recall. I know that a number of
7 media attended.
8 Q. And when you say that a number attended, what
9 do you consider to be a successful attendance number?
10 A. I mean, it could -- depending upon the
11 campaign. It could be one media if we get a huge story
12 out of it. It could be 15. It really -- success is
13 relative.
14 Q. So it's a qualitative as well as a
15 quantitative determination you have to make?
16 A. Yes.
17 Q. Exhibit -- I'm going to show you now some
18 press releases that were done for American Lung
19 Association of California.
20 (Whereupon, Defendant's Exhibit 371
21 was marked for identification.)
22 MR. LERNER: Q. Exhibit 371 is a press
23 release dated December 16, 1997, as to which you're
24 listed as contact. It says the contact is yourself or
25 your local American Lung Association.
26 A. Uh-huh.
27 Q. What does that mean, "or your local American
28 Lung Association"?

99

1 A. It's an agreement that we have with our local
2 offices that the media can either call me as a state
3 contact, or if they want to speak to their local, this
4 800 number is a national system where anyone who calls
5 it is automatically connected to their local office.
6 Q. So depending on their Area Code --
7 A. Right.
8 Q. -- the number gets routed -- the call gets
9 routed?
10 A. Right.
11 Q. At the time that -- this is a press release
12 you drafted and issued on or about December 16, 1997?

13 A. Yes.
14 Q. What was your procedure for distributing a
15 press release such as this?
16 A. Again, it depends upon the campaign.
17 Distribution routes will include, though I can't speak
18 to this exact release, but it could have included fax
19 broadcasting directly to media. I might have used a
20 media distribution service to handle the distribution
21 for us. I'm assuming -- '97. I might have sent this
22 out by e-mail. I can't speak to the exact distribution
23 points of this release, but those are some examples of
24 how I distribute releases.
25 Q. And have you used a media distribution
26 service to distribute press releases pertaining to
27 smoke-free bars or otherwise to environmental tobacco
28 smoke?

100

1 A. Probably, but I can't document it right now.
2 Q. What media distribution service have you
3 used?
4 A. One company is called Media Distribution
5 Services. We might have used Business Wire. And/or
6 internal lists.
7 Q. Did you have an objective for how widely
8 press releases pertaining to smoke-free bars were to be
9 distributed?
10 A. Did I have a what? I'm sorry. I missed the
11 word.
12 Q. An objective for how widely they were to be
13 distributed?
14 A. It wasn't a written objective. Since this
15 was a role model, smoke-free workplace, we certainly
16 wanted to share it with a number of outlets.
17 Q. Did you have a list of outlets to which this
18 was -- press releases relating to smoke-free bars were
19 sent?
20 A. For this particular release, I can't tell
21 you. Sometimes if we use an outside service, I'll get a
22 summary of where it went, but again, I can't tell you
23 right now which list we worked from or if it was just a
24 internal list.
25 Q. Can you recall what the objective was with
26 regard to the distribution of public relations materials
27 of smoke-free workplaces?
28 A. Generally, the objective was to communicate

101

1 the success of -- in this case the success of AB 13
2 specifically in relation to bars. That would be the
3 overall objective, and protection of all employees from
4 ETS.
5 Q. My question is a little bit different. I'm
6 trying to determine what your objective was with respect
7 to how widely the distribution of these press releases
8 was made. In other words, was it your goal to blanket
9 the media in the State of California with these press
10 releases?
11 A. "Blanket" is relative, again, because we
12 can't reach all media outlets, but we can reach many
13 because this is a statewide issue.
14 Q. So it was your intention to reach all of the
15 major newspapers in California?
16 MR. SIPOS: Again, is that for this one or
17 for all?

18 MR. LERNER: Q. For all smoke-free workplace
19 issues.

20 A. Well, the objective was to reach as many
21 media as possible in California, not just newspapers,
22 but broadcast media as well.

23 Q. And what was your typical procedure for
24 trying to reach as many media as possible with regard to
25 the smoke-free bar law?

26 A. I would say generally it's a combination. We
27 really don't use any one -- Again, it will be a
28 combination of sending out through internal lists,

102

1 sometimes using outside services. But again, I can't
2 tell you exactly how we distributed this one. But it's
3 usually a combination of both.

4 Q. What internal lists were used or do you
5 maintain of media for distribution of press releases?

6 A. We have a fax broadcast system, not for every
7 media outlet in the state, but for a number of the major
8 outlets.

9 Q. What is a fax broadcast system?

10 A. It's where you scan something into the fax
11 machine and send it to multiple outlets without having
12 to send it individually.

13 Q. So you program the fax machine with the fax
14 numbers of major media newspapers and radio and TV?

15 A. Yes.

16 Q. And then the machine will automatically send
17 the fax?

18 A. Right.

19 (Whereupon, Defendant's Exhibit 372
20 was marked for identification.)

21 MR. LERNER: Q. And I'd just ask you to
22 identify Exhibit 372, please.

23 A. Confirm that I worked on this you mean?

24 Q. Yes.

25 A. Yes, that's correct.

26 Q. This is a press release that you authored?

27 A. Yes.

28 Q. And it was also distributed on or about

103

1 December 30, 1997?

2 A. Yes.

3 Q. And was this also distributed -- was this
4 document distributed by the fax broadcast system?

5 A. I can't confirm that either way. I'm
6 assuming so. But again, sometimes we'll use the fax
7 broadcast, and sometimes we don't. Sometimes it's first
8 class mail. Again, I would have to go back. And I
9 don't know if I can document it, the exact route of
10 distribution.

11 (Whereupon, Defendant's Exhibit 373
12 was marked for identification.)

13 MR. LERNER: Q. Okay. Exhibit 373 is a
14 collection of editorials that were contained in your
15 files. I wanted to ask you about these. Are any of
16 these editorials a result of the efforts of the American
17 Lung Association of California?

18 A. They could have been. I really can't tell
19 you.

20 Q. Do you recall -- do you have -- Can you tell
21 me why these editorials appear in your records?

22 A. For background, so we can track the history

23 of this issue.
24 Q. To track the measure of publicity being
25 received by it?
26 A. Right, or to see how papers are
27 editorializing on this particular issue.
28 Q. And did you review the editorial coverage
104
1 received by the smoke-free bar issue?
2 A. When you say review, how are you defining
3 that?
4 Q. Did you review editorials such as this and
5 other newspaper coverage received by the smoke-free bar
6 issue?
7 A. In terms of review, I read them and filed
8 them.
9 Q. Did you form an impression -- did you form
10 any beliefs as to what sort of publicity was being
11 received by the effort to promote smoke-free bars?
12 A. Did we send out a news release about this?
13 Is that your question?
14 Q. No. Did you form an impression of the
15 publicity that was being received by the smoke-free bar
16 issue?
17 A. Sure.
18 Q. Did you believe that the publicity that was
19 being generated by that issue was favorable to the cause
20 of smoke-free bars?
21 A. It depended upon the time frame and the
22 region throughout the state.
23 Q. Okay. What do you mean by dependent upon the
24 time frame?
25 A. Whether we were right at implementation,
26 whether we were a year out from implementation, whether
27 there were some areas that were more supportive than not
28 of the Smoke-free Workplace Act.

105

1 Q. What areas were supportive?
2 A. I couldn't provide a list for you, but we
3 knew that there was widespread support and some areas
4 that weren't.
5 Q. Did your assessment of the extent of support
6 for the smoke-free bar issue influence in any way the
7 work that you were doing?
8 A. Can you say that again?
9 Q. Did you take into account the levels of
10 support in different regions of the state in determining
11 what you needed to do?
12 A. Uh-huh.
13 Q. And were there some areas at which you
14 directed more efforts than others in order to enhance
15 the level of support?
16 A. Well, we addressed that probably on the
17 monthly calls, for example, but my efforts were to
18 support statewide efforts. I think in the documents you
19 saw a copy of Clearing the Air about smoke-free bars,
20 for example. That was the statewide picture of what was
21 going on.
22 (Whereupon, Defendant's Exhibit 374
23 was marked for identification.)
24 MR. LERNER: Q. Exhibit 374 is a -- it
25 contains a couple -- contains three separate documents.
26 And the page Bates stamped ALA 975 appears to be a memo
27 from you to Cassandra Pride dated January 16, 1998; is

28 that correct?

106

1 A. Yes.
2 Q. Why were you writing to Cassandra Pride?
3 A. It looks like I was confirming an interview.
4 Q. So this is an example of an interview that
5 you set up for an American Lung Association volunteer?
6 A. Yes.
7 Q. And in this case, Spencer Koerner, M.D.?
8 A. Yes.
9 Q. Can you identify page 2 of this document?
10 That is the page Bates stamped ALA 1148.
11 A. Identify how?
12 Q. Can you tell me what it was?
13 A. This looks like a copy of a release from our
14 San Diego affiliate, informational copy to me from that
15 office.
16 Q. And this would describe a program they were
17 undertaking in San Diego in relation to the 1998 Super
18 Bowl?
19 A. Yes.
20 Q. So this is something you received for
21 information but not for action?
22 A. Right.
23 Q. And can you explain what -- or do you
24 recognize the third page of the exhibit marked ALA 1255?
25 A. Yes.
26 Q. What is this document?
27 A. It looks like it was a status report on a
28 bill from our government relations office just updating

107

1 us on the status of it.
2 Q. This was a Bill AB 297?
3 A. Yes.
4 Q. Who is Dr. Koerner?
5 A. He's a volunteer.
6 Q. Where is he based?
7 A. In Los Angeles, California.
8 Q. And as a volunteer, what does he do?
9 A. He's a state board member and involved with
10 the national office as well.
11 Q. So he functions to promote the policies and
12 goals of the organization?
13 A. Yes.
14 Q. Do you know what his medical practice
15 specialty is?
16 A. He formerly, I believe, was the department
17 head for pulmonology at Cedar Sinai Medical Center in
18 Los Angeles. I think currently he's over their
19 telemedicine program.
20 Q. Have you arranged more than one interview for
21 him?
22 A. Oh, yes.
23 Q. Are there other people who function -- Does
24 he function in effect as a spokesman for the American
25 Lung Association?
26 A. In one of his capacities, yes.
27 Q. That is, does he have other capacities?
28 A. He's a state board member.

108

1 Q. Are there other people that you arrange
2 interviews for who function as spokesmen for American
3 Lung Association?

4 A. Yes.
5 Q. Who else is a spokesman?
6 A. We have a number of spokespeople -- again, I
7 can't list all of them -- depending upon the topic or
8 issue.
9 Q. How many people do you have, or can you tell
10 me the names of the people who are spokespeople for
11 environmental tobacco smoke issues?
12 A. Again, we have quite a number of them because
13 the media calls whoever is going to be available. Are
14 you speaking specifically to ALA of California or all of
15 our locals as well?
16 Q. I'm talking about ALA of California. Who are
17 the spoke -- Who have been spokespeople for
18 environmental tobacco smoke issues?
19 A. Some of them have been Dr. Koerner. Vanessa
20 Tatum.
21 Q. I'm sorry. Could you spell her last name?
22 A. T-A-T-U-M as in Mark.
23 Q. Who is she?
24 A. She's a physician in Inglewood, California.
25 Those are just a couple of examples. We have
26 lists of spokespeople, again, depending upon
27 availability and specialty.
28 Q. Do you have lists of spokespeople for issues

109

1 pertaining to environmental tobacco smoke?
2 A. No. I mean, I have Post-It notes and lists
3 of people who are available, but I don't have an ETS
4 spokesperson's list, because many of our spokespeople
5 address multiple issues.
6 Q. I see. Have you received media requests for
7 a spokes -- for someone to interview pertaining to
8 environmental tobacco smoke in the past?
9 A. Uh-huh, yes. That's one example.
10 Q. How do you select a person to be interviewed?
11 A. It's a combination of factors. Sometimes
12 geography, certainly availability, their expertise.
13 Q. Do you know how many people you have that
14 have served as spokespeople for ETS issues?
15 A. For the ALA of California?
16 Q. Yes.
17 A. I'd say guesstimate six to 12.
18 Q. Can you recall any of their names other than
19 Dr. Koerner and Dr. Tatum?
20 A. Dr. Burns in San Diego. I don't recall his
21 first name.
22 Q. Anyone else?
23 A. No, not without looking at my lists.
24 Q. Do you recall what interviews you arranged
25 for Dr. Burns?
26 A. No.
27 Q. Do you have some kind of list that you look
28 at when you need a spokesperson for smoke-free

110

1 workplaces or bars issues?
2 A. It's a variety of sources. I mean, I
3 certainly refer to our board list, our technical
4 advisory group list, committee members.
5 (Whereupon, Defendant's Exhibit 375
6 was marked for identification.)
7 MR. LERNER: Q. Exhibit 375 appears to be a
8 copy of a full page advertisement from the NEW YORK

9 TIMES of January 21, 1998. My question is, do you
10 recognize this document?
11 A. Yes.
12 Q. And what is it?
13 A. What is it?
14 Q. Yeah.
15 A. It looks like it was a full page ad in the
16 NEW YORK TIMES regarding smoke-free bars and related
17 supporters.
18 Q. Did you have anything to do with placing this
19 advertisement?
20 A. Not with placing of it. I might have given
21 feedback. But I don't recall.
22 Q. I see below at the bottom it says, "This ad
23 was sponsored by Breath."
24 A. Right.
25 Q. Do you recall giving any feedback on the ad?
26 A. I don't recall. I might have, but I really
27 can't tell.
28 Q. Do you know how you happen to have a copy of
111
1 it in your file?
2 A. I'm assuming it was brought to me, and I put
3 it in the history file assuming someone brought it to
4 me.
5 (Whereupon, Defendant's Exhibit 376
6 was marked for identification.)
7 MR. LERNER: Q. Exhibit 376 is a fax cover
8 and attachment to you from Marc Burgat, director of
9 public affairs, and it's dated February 9, 1998. Is
10 this a document that you received from Mr. Burgat?
11 A. Yes, it appears so.
12 Q. What was AB 297?
13 A. I believe it was one of the many attempts to
14 repeal the Smoke-free Workplace Act or weaken it.
15 Q. And you mentioned that -- Do you recall
16 having any discussions with anyone about this statement
17 by Mr. Thompson referred to at the second page?
18 A. I don't recall.
19 Q. "As California does, so does the nation"?
20 A. I don't recall.
21 Q. Do you recall -- If you were to obtain
22 publicity in smoke-free bar issues or smoke-free
23 workplace issues, do you regard California as an
24 important location for that issue?
25 A. As an important location for what?
26 Q. For the determination of -- for the
27 implementation of smoke-free bar laws?
28 A. It is certainly a role model, yes.
112
1 Q. What do you mean by role model? Role model
2 for the rest of the country?
3 A. It could be. Or for other states in
4 protecting people's, employees' health.
5 Q. Did you regard it as -- California as a role
6 model in your work on the issues of smoke-free bars and
7 workplaces?
8 A. My work personally or my work in terms of the
9 issue?
10 Q. In terms of the issue.
11 A. Statewide.
12 Q. Statewide?
13 A. Yes.

14 (Whereupon, Defendant's Exhibit 377A
15 was marked for identification.)
16 (Whereupon, Defendant's Exhibit 377B
17 was marked for identification.)
18 MR. LERNER: Q. 377 A and 377 B are media
19 advisory and a press release; is that correct?
20 A. Yes.
21 Q. These were jointly prepared with the American
22 Cancer Society, the American Heart Association and the
23 American Lung Association of California?
24 A. Yes.
25 Q. Was this a coalition such as you earlier
26 described?
27 A. One example, yes.
28 Q. What was the reason for these media advisory
113
1 and this press release?
2 A. Again, to communicate the effectiveness of
3 Smoke-free Workplace Act and convey its support by other
4 organizations.
5 Q. Was this a media advisory and a press release
6 that was drafted at issue in part by the American Lung
7 Association of California on or about February 10, 1998.
8 A. In part, yes.
9 Q. And did you issue this press release and the
10 media advisory? By that I mean did you send it out?
11 A. Well, it appears by the attachment 1095 that
12 I at least sent it to other lung association offices. I
13 don't recall with this specific one who handled the
14 distribution to media contacts. It could have been me
15 in conjunction with other partners.
16 Q. So this was a -- if you could -- just
17 referring to page 1095, is this a record of a fax
18 distribution --
19 A. Yes.
20 Q. -- from your office?
21 A. Yes.
22 Q. And this particular fax then went to ALA
23 affiliate offices and branch offices?
24 A. Yes.
25 Q. And when you sent this press release to
26 affiliate offices, faxed it out, and to branch offices,
27 to your knowledge was there something further done with
28 that press release when it arrived at those offices?
114
1 A. I don't know. I'm assuming so, but I don't
2 know what each office does with information like this.
3 Q. Do you know from your experience whether any
4 of the offices has a further means of distribution of
5 these press releases?
6 A. Yes.
7 Q. So for example -- Based on your experience at
8 ALA Los Angeles, does Los Angeles have a procedure for
9 distributing press releases?
10 A. Uh-huh, yes. But it depends upon the project
11 and their time frame if they are able to get something
12 out. Or I mean, there are a number of contributing --
13 Q. Sure.
14 A. -- factors.
15 Q. But each local office or affiliate have their
16 own procedures for distributing press releases?
17 A. Yes.
18 Q. And in other words, getting the word out

19 pertaining to a particular topic of interest?
20 A. Yes.
21 (Whereupon, Defendant's Exhibit 378
22 was marked for identification.)
23 MR. LERNER: Q. Exhibit 378 is a copy of a
24 newspaper article that we also obtained. It was also
25 produced from your files. And can you tell me why this
26 newspaper article was in your files?
27 A. Similar to the other related documents, for
28 history. 115

1 Q. There's a reference to the -- you can see the
2 underlined reference on the top of the first page to a
3 quote from Diane Kaiser?
4 A. Uh-huh.
5 Q. Director of the California smoke-free bar
6 program, an offshoot of the American Lung Association.
7 Was there a relationship between the American -- what
8 was the relationship between the American Lung
9 Association and the California Smoke-free Bar Program?
10 A. That's that project I referred to earlier.
11 That's a Prop 99 project, a contract of the ALA of the
12 East Bay, which is a statewide project.
13 Q. And has the American Lung Association of
14 California worked with the California smoke-free bar
15 program on any projects?
16 A. Yes, in the general sense of that word.
17 Q. Okay. And what specifically have the two
18 organizations done together?
19 A. I have provided feedback for news releases
20 they have drafted. They have a component in their
21 program, smoke-free musicians as part of their
22 smoke-free bar outreach. I have provided feedback about
23 that piece of their work as well as a couple of
24 examples.
25 (Whereupon, Defendant's Exhibit 379
26 was marked for identification.)
27 MR. LERNER: Q. Exhibit 379 is a document
28 called Summary of Findings, Smoke-free Bar Patron Survey 116

1 prepared by Communication Sciences Group dated February
2 25, 1998.
3 (Whereupon, Defendant's Exhibit 380
4 was marked for identification.)
5 MR. LERNER: Q. And Exhibit 380 appears to
6 be a memorandum from you to Executive Directors,
7 Communications, Program, Advocacy Staff, dated March 4,
8 1998.
9 Did you draft and send out the memo which is
10 marked Exhibit 380?
11 A. Yes.
12 Q. Who do you mean by Executive Directors,
13 Communications, Program and Advocacy Staff?
14 A. Local lung associations throughout
15 California.
16 Q. What was the purpose of the memorandum marked
17 Exhibit 380?
18 A. Again, to share information of local projects
19 specific to Los Angeles County that other areas might be
20 interested in.
21 Q. And were you reporting some of the results
22 that were part of the -- strike that.
23 Do you recognize Exhibit 379?

24 A. It rings a bell, but --
25 Q. Did you prepare the key finding?
26 A. No.
27 Q. I'm sorry. The key findings which are
28 attached to your memorandum that is -- did you prepare

117

1 page ALA 1076?
2 A. No.
3 Q. Who prepared that page?
4 A. I don't know.
5 Q. Did you receive it from someone outside your
6 organization?
7 A. Yes.
8 Q. Do you recall from whom?
9 A. I don't. It looks like it was from Los
10 Angeles County or one of their representatives.
11 Q. So you were distributing those findings to
12 other American Lung Association offices?
13 A. Yes, yes.
14 (Whereupon, Defendant's Exhibit 381
15 was marked for identification.)
16 MR. LERNER: Q. 381. Can you identify
17 Exhibit 381, please?
18 A. Yes.
19 Q. What is Exhibit 381?
20 A. It's a memo to our local offices throughout
21 California and, it looks like also, to our national
22 office, which many of these memos are copied to as well
23 regarding a newsletter pertaining to smoke-free bars.
24 Q. This was a -- was the smoke-free bars
25 newsletter called Clearing the Air About Smoke-free Bars
26 prepared by you?
27 A. Yes.
28 Q. I see that this exhibit contains what appears

118

1 to be two different issues of the newsletter; is that
2 correct?
3 A. It looks like there was a double photocopying
4 here for 816 and 818. It looks like it's the same one
5 as does -- I don't know what's going on here. But
6 there's more than one. It looks like there's more than
7 one issue of this newsletter.
8 Q. All right. Let's try to clarify. Exhibit --
9 or the page marked ALA 816 is the front page of the
10 first issue; is that correct?
11 A. It looks like that way. The first issue we
12 didn't number, and the second issue we did.
13 Q. At the bottom of 816 there's a reference to
14 "over" which indicates that -- was this a one-page
15 document?
16 A. No. These -- I don't know if we had two,
17 three or four issues of this. Whatever we have, you
18 have copies of. And they were both two pages. It looks
19 like 817 is the reverse side of 816.
20 Q. And is page 821 the reverse side of 820,
21 which is the first page of issue 2?
22 A. Yes. They both have "issue 2" on them,
23 uh-huh.
24 Q. Do you know if there were more than two
25 issues of Clearing the Air?
26 A. There might have been three, but again, if
27 there was, you definitely would have a copy of that
28 because it was all in the smoke-free bar file.

1 Q. And what was the -- did you make the decision
2 to issue or to prepare an issue of Clearing the Air?
3 A. Yes.
4 Q. What was your reason for creating this
5 newsletter?
6 A. To again impart information about the success
7 of the law, its progress and to capture local
8 perspectives throughout California.
9 Q. Did you create any other newsletters, or have
10 you created other newsletters on other topics?
11 A. Since this, yes.
12 Q. On what other topics have you done that?
13 A. For example, we have another Clearing the Air
14 about zero emission vehicles.
15 Q. Have you prepared any newsletters on other
16 issues pertaining to environmental tobacco smoke?
17 A. No.
18 Q. So these are the only newsletters you
19 prepared pertaining to environmental tobacco smoke?
20 A. Yes.
21 Q. Before we leave the subject of the news
22 letters, to whom did you distribute the Clearing the Air
23 newsletters which were part of Exhibit 381?
24 A. That was intended for media and opinion
25 leaders.
26 Q. What was the circulation of Clearing the Air?
27 A. I don't recall, but it was statewide.
28 Q. When you say opinion leaders, who do you

1 mean?
2 A. Included elected officials, other individuals
3 in public offices.
4 Q. And are those state elected officials, local
5 elected officials?
6 A. State.
7 Q. State elected officials?
8 A. Right. Since this also went into our local
9 offices, they very well were encouraged to copy it and
10 distribute it locally.
11 Q. Are there distribution lists of opinion
12 leaders that are maintained by your office?
13 A. Our government relations office has that
14 particular database.
15 Q. So how would you distribute -- what was your
16 method for distributing information -- written
17 information such as Clearing the Air to opinion leaders?
18 A. This newsletter probably went by first class
19 mail and to opinion leaders in Sacramento. It might
20 have been physically dropped off at our offices, I don't
21 know. But that is -- it's usually a combined approach.
22 Q. So there's mailing lists and there's address
23 lists for both mail and personal delivery?
24 A. Right.
25 Q. Are there also fax distribution lists for
26 public officials?
27 A. I don't know. I wouldn't be surprised, but I
28 can't tell you if our government relations office has

1 that or not.
2 Q. Is there a secondary means of distribution to
3 local public officials through affiliates?
4 A. They can do that. Whether or not they did it

5 or not I can't document.
6 Q. Do you recall any discussion with any of your
7 affiliates about distributing Clearing the Air locally?
8 A. I don't recall specific conversations. They
9 knew it was coming out. I'm sure it came up in the
10 monthly calls.
11 Q. That was what I was going to ask. This would
12 have tended to be a topic you discussed with affiliates
13 in a monthly conference call?
14 A. More than likely.
15 Q. And they may or may not have taken action;
16 you don't recall?
17 A. Right.
18 (Whereupon, Defendant's Exhibit 382
19 was marked for identification.)
20 MR. LERNER: Q. And can you identify Exhibit
21 382?
22 A. A memo from me to Carolyn Martin.
23 Q. This is one you drafted on or about May 20,
24 1998?
25 A. Yes.
26 Q. And did you arrange a radio interview for Lou
27 Moench and Carolyn Martin?
28 A. Yes.

122

1 Q. Who is Carolyn Martin?
2 A. She at that point was a volunteer. She's had
3 a long volunteer history with the organization. So I
4 won't remember at that date what committees and/or other
5 volunteer capacities she was in.
6 Q. Do you recall her areas of expertise or
7 professional credentials?
8 A. She's had a long history with tobacco issues.
9 I'd say for a solid 20 years.
10 Q. Is she one of the people that you considered
11 a spokesperson for the organization on tobacco control
12 issues?
13 A. Yes.
14 Q. Is Lou Moench also a person you consider a
15 spokesperson for the organization --
16 A. Yes.
17 Q. -- on tobacco control?
18 A. Yes.
19 Q. And by "tobacco control" in both instances I
20 mean secondhand smoke.
21 A. Yes.
22 (Whereupon, Defendant's Exhibit 383
23 was marked for identification.)
24 MR. LERNER: Q. Can you identify Exhibit
25 383?
26 A. Another news release regarding smoke-free
27 bars.
28 Q. This is one you drafted and issued on or

123

1 about June 25, 1998?
2 A. Yes.
3 (Whereupon, Defendant's Exhibit 384
4 was marked for identification.)
5 MR. LERNER: Q. Can you identify Exhibit
6 384, please?
7 A. It's a fax from ROLLING STONE magazine
8 regarding advertising. This is in relation to Breath,
9 the Breath project, an example of the type of support we

10 provided them.
11 (Whereupon, Defendant's Exhibit 385
12 was marked for identification.)
13 (Whereupon, Defendant's Exhibit 386
14 was marked for identification.)
15 (Whereupon, Defendant's Exhibit 387
16 was marked for identification.)
17 (Whereupon, Defendant's Exhibit 388
18 was marked for identification.)
19 MR. LERNER: Q. I show you Exhibit 387 and
20 388 and ask if you recognize those.
21 A. 387 is a memo from me to an advertising
22 representative at Rolling Stone. It looks like it's a
23 draft. It wasn't the actual final memo. And it went to
24 Laura Collins, who is a staff member of the Breath
25 project, getting her feedback on it.
26 Q. Did Exhibit 384, that is, the memo faxed to
27 you from ROLLING STONE magazine pertain to the
28 Smoke-free Musicians Coalition project?

124

1 A. Yes.
2 Q. Does any of the handwriting on the cover page
3 of Exhibit 384 belong to you?
4 A. Yes. Some, but not all.
5 Q. And which portions are your handwriting?
6 A. Everything outside -- Well, the four lines
7 under Comments, that is not my writing. My writing is
8 the area above and to the left of Comments, below and to
9 the left of Comments, and on the last line of the
10 Comment line and everything else on the bottom part of
11 the page.
12 Q. Okay. And what work were you doing with
13 ROLLING STONE magazine?
14 A. I was getting background information for the
15 possibility of Breath running an ad in that publication.
16 Q. And did you draft and send Exhibit 387 to
17 Jennifer Thompson at ROLLING STONE magazine on or about
18 March 8, 1999?
19 A. The draft dated March 8th went to Laura
20 Collins in the Breath project, it looks like, on March
21 4th. I believe I ended up sending the memo, but I
22 can't -- I don't see the final memo here. So I'm not
23 sure if that actually happened or not.
24 Q. Does this refresh your recollection that you
25 assisted in placing some advertisements for Breath
26 related to the Smoke-free Musicians Coalition project
27 for ROLLING STONE?

28 A. I was involved in the background, and I don't
125

1 remember now if that actually ran or not.
2 Q. Who is Laura Collins?
3 A. She's a staff member on the Breath project.
4 She reports to Diane Kaiser.
5 Q. Can you identify Exhibit 388?
6 A. Yes. It's a memo from me to Laura Collins
7 about Musicians for Smoke-Free Air.
8 Q. What was the purpose of -- You drafted and
9 sent this memo to her on or about June 14, 1999?
10 A. Uh-huh.
11 Q. What was the purpose of this memorandum?
12 A. To send her a possible media list to
13 distribute a future news release.
14 Q. And is the media list -- what are the -- is

15 this a media list that you prepared, that is, pages ALA
16 722 through 724?

17 A. No. This was from one of our outside
18 sources, MDS Media Distribution Service.

19 Q. Is this something -- is this a record that
20 you had in your files, or did you request it?

21 A. Yes, I requested the list, and it ended up in
22 my file.

23 Q. So if you were looking for media contacts in
24 a particular subject area or a particular location, you
25 could obtain a list of them from MDS?

26 A. Yes.

27 Q. Do you happen to know other advertisements
28 relating to the musicians for placing in ROLLING STONE

126

1 or other publications?

2 A. I don't recall.

3 Q. Can you identify Exhibit 385, please?

4 A. A memo from me to Business Wire regarding a
5 smoke-free bar news release.

6 Q. This is one you wrote and sent to Business
7 Wire on or about December 28, 1998?

8 A. Yes.

9 Q. And you prepared the press release, also,
10 which is pages 823 through 825 of this exhibit?

11 A. Yes.

12 Q. That was done on or about December 29,
13 1988 -- 1998?

14 A. The news release, yes.

15 Q. Business Wire. What is Business Wire?

16 A. It's another media distribution service.
17 It's a paid news wire.

18 Q. So does this reflect that you used Business
19 Wire to distribute the press release?

20 A. Yes.

21 Q. Did Business Wire have a particular
22 distribution list, or does it go out generally?

23 A. Well, they have subscribers. And when you
24 send, you define what circuit you want it to go out on,
25 and those subscribers will receive it.

26 Q. What was the purpose of the press release
27 which is part of Exhibit 385?

28 A. Again, just to mark the history and success

127

1 of this smoke-free workplace act.

2 Q. Can you identify Exhibit 386?

3 A. It's an e-mail from, it looks like, a radio
4 station to me. It would be a transcript of a news
5 report.

6 Q. Is Scott Horsley a radio reporter for KPBS in
7 San Diego?

8 A. Yes.

9 Q. And did you arrange to -- assist in arranging
10 this radio story that's depicted in 386?

11 A. I don't know if I assisted with this or not.
12 I know I had contact with them. I might have just
13 spoken with him to request the report. I don't know if
14 I coordinated the actual interview, though.

15 Q. The last page of this exhibit, which is
16 Bates No. ALA 811, is a monitoring report?

17 A. Yes.

18 Q. Can you tell me what that is?

19 A. It's a service that provides summaries of

20 news coverage.
21 Q. And at the top there's a heading "American
22 Lung Association, 12/4 to 1/5"?
23 A. Uh-huh.
24 Q. What does that -- Can you tell me what that
25 means, or do you have an understanding of what that
26 means?
27 A. It looks like it is probably their search
28 indicators that they use to pull up related stories for
128
1 the American Lung Association during that time period.
2 Perhaps not an inclusive list, but possibly so.
3 Q. Did you obtain other monitoring reports for
4 stories that were generated by press releases that you
5 issued?
6 A. Sometimes, but not consistently.
7 Q. So copies of any monitoring reports you had
8 would be found in your files?
9 A. Yes.
10 Q. Did you have any practice of -- or did you
11 have a practice of determining what stories appeared in
12 the press based on press releases you have issued?
13 A. Can you say that again?
14 Q. Did you search the press or otherwise track
15 stories that appear based on press releases you had
16 issued?
17 A. Yes.
18 Q. And what was your practice in doing that?
19 A. Well, as you can see, it's a variety of ways.
20 Sometimes we would get a copy from the local office. We
21 have a statewide news clipping service. It isn't
22 through just one source.
23 Q. Overall, can you -- did you form an
24 impression as to whether the press releases you issued
25 pertaining to smoke-free bars received publicity?
26 A. Yes, but we didn't have a formal reporting
27 mechanism to document that, but we would have copies of
28 them.
129
1 Q. Did you believe that your press releases were
2 successful in obtaining publicity generally?
3 A. Yes.
4 Q. Where did you believe you were successful in
5 obtaining publicity specifically? Was it in any
6 particular media or other places?
7 A. In a number of media, but again, far too many
8 to report or document.
9 Q. Did you feel you were successful in obtaining
10 publicity on smoke-free workplace and bar issues in the
11 major California newspapers?
12 A. Generally speaking, yes.
13 Q. Did you also feel that you were successful in
14 obtaining publicity on radio?
15 A. Yes.
16 Q. What types of radio publicity do you believe
17 was obtained or are you aware was obtained for press
18 releases you issued pertaining to smoke-free workplaces
19 and bars?
20 A. When you say "what type," I mean, as in news
21 reports or --
22 Q. Well, that's exactly what I'm asking. Was it
23 news reports, special reports?
24 A. Certainly news -- Again, generally speaking,

25 news reports. Some stations might have editorialized on
26 it in response to the information we sent them. Again,
27 not being in the news department, you don't know what
28 creates the ultimate decision, but I'm sure that it

130

1 affected some of those decisions.

2 Q. As a public relations person, I mean, do you
3 see it as your function to maintain visibility for the
4 issue and awareness among the media so that when an
5 event that you believe is notable occurs, it will be
6 seen as important by the media?

7 A. Yes.

8 Q. And do you believe that the press releases --
9 generally speaking, the press releases you've reviewed
10 today -- I'm not asking about each and every one of
11 them -- did receive some notice in the media?

12 A. Yes.

13 Q. And during 1997 and 1998, do you believe that
14 you did generate significant publicity on a smoke-free
15 bar issue?

16 A. Yes.

17 Q. And that was an issue of public concern
18 throughout California at that time?

19 A. Yes.

20 (Whereupon, Defendant's Exhibit 389
21 was marked for identification.)

22 MR. LERNER: Q. I want to show you another
23 press release and related documentation marked Exhibit
24 389. Is this a press release that you drafted and sent
25 to Pamela Moore on or about March 5, 1998 -- I'm sorry,
26 a fax.

27 A. It's a memo, not a news release.

28 Q. What was the purpose of this memo?

131

1 A. It was to summarize an issue regarding
2 Honeywell air filters in relation to AB 13.

3 Q. In other words, it had come to your attention
4 that some assertions regarding the effectiveness of
5 Honeywell air filters in cleaning air of tobacco smoke
6 were made in this Food & Beverage publication, which is
7 pages 806 -- page 806?

8 A. Can you state that again?

9 Q. How did it come -- Did it come to your
10 attention that an assertion that Honeywell air cleaners
11 could rid the air of tobacco smoke had come to your
12 attention?

13 A. Yeah. Exact language I'm not sure, but it's
14 pertaining to Honeywell air filters and ETS.

15 Q. What was your reason for drafting this memo
16 to Pamela Moore?

17 A. To draw attention to the issue.

18 Q. Was it your decision to draw attention to
19 that issue?

20 A. In part. It looks like I received this
21 background from one of our staff members.

22 Q. That is Bob Doyle?

23 A. Correct.

24 Q. And he's with whom?

25 A. Formerly with the San Diego Lung Association.

26 Q. Who is Pamela Moore?

27 A. It looks like she was a staff member in our
28 national development office. She's no longer there.

132

1 Q. Do you recall whether you arranged any
2 publicity for this particular issue relating to the
3 Honeywell air filters?
4 A. I don't remember.
5 Q. Typically, when you issued a press release
6 pertaining to smoke-free air, did you have input into
7 the decision to issue the press release?
8 A. Yes.
9 Q. And that is to make a particular issue the
10 subject of a press release?
11 A. Yes.
12 Q. What criteria did you use in determining
13 generally whether a press release should be issued
14 pertaining to a smoke-free air matter?
15 A. There are a number of factors. Certainly
16 looking at our strategic plan, our public policy
17 priorities, current events and activities and certainly
18 through the strategic plan if it's directly in line with
19 our mission.
20 Q. Generally speaking, how would you
21 characterize the mission as pertains to environmental
22 tobacco smoke?
23 A. It's in direct relation to the mission to
24 protect the people and prevent lung disease and promote
25 lung health.
26 Q. You say that there was -- when there was a
27 public policy concern. What were the public policy
28 concerns pertaining to ETS?

133

1 A. Just referring to our public policy
2 priorities, and that's a document -- it's -- I don't
3 remember the exact wording of it, but tobacco is
4 certainly part of that, those priorities.
5 Q. And is that an American Lung Association of
6 California document?
7 A. Yes.
8 Q. What's the --
9 A. I believe our national has one, too.
10 Q. When was that document prepared?
11 A. That's prepared annually.
12 Q. Did you produce any copies of those
13 priorities as part of the production?
14 A. I might have, but probably not because our
15 government relations office produces that document.
16 Q. Did anyone else at your organization
17 participate in decisions to issue press releases
18 pertaining to smoke-free workplaces in bars?
19 A. I'm sorry. Can you say that again?
20 Q. Did anyone else at the American Lung
21 Association of California participate in decisions to
22 issue press releases pertaining to smoke-free workplaces
23 and bars?
24 A. Yes, yes.
25 Q. Who else was involved in the decision to
26 issue press releases?
27 A. It depends upon the topic and the timing.
28 I'm in regular communication with all of our

134

1 departments. With an issue like that, more often than
2 not I'm conferring with Paul in the government relations
3 office.
4 Q. And generally speaking, did an issue need to
5 be important before a press release was issued?

6 A. That's generally the basis of the news
7 release, yes.
8 Q. So it would be fair to say if you issued a
9 news release on a topic, you guys perceived it to be
10 important?
11 A. Right.
12 Q. Fair enough.
13 Have you made any evaluations in your own
14 mind of the effectiveness of the press releases you've
15 issued pertaining to smoke-free workplaces and bars?
16 A. A formal evaluation or a subjective
17 evaluation?
18 Q. A subjective evaluation.
19 A. Yes.
20 Q. What's your own evaluation of the
21 effectiveness of the press releases on those areas?
22 A. That they've been effective.
23 Q. And in what respects have they been effective
24 in your view?
25 A. Raising public awareness, balancing
26 information.
27 Q. That is balancing contrary information?
28 A. Yes.

135

1 Q. From sources such as the National Smokers
2 Alliance?
3 A. Correct.
4 Q. And has the publicity that you've generated
5 also been effective at the polls in your view?
6 A. I think that would be safe to assume.
7 Q. And specifically in what elections or
8 initiative do you think that your publicity has been
9 effective in assisting the cause of smoke-free
10 workplaces and bars?
11 A. I think generally exposure on tobacco issues
12 affects tobacco-related election items.
13 Q. Do you think that the publicity that you
14 generated on smoke-free workplaces and bars contributed
15 to the success of any ballot initiatives?
16 A. It could have.
17 Q. In your own mind, do you think it did?
18 A. It's possible. We haven't conducted any
19 polls on that, so I can't give you numbers.
20 Q. Do you know anyone that has conducted
21 research on those topics?
22 A. No. I mean, I know the Tobacco Control
23 Section, Department of Health Services, conducts regular
24 polls about tobacco issues. But regarding that specific
25 question, I'm not aware.
26 MR. LERNER: Let me just take a couple of
27 minutes and see if there's anything else I need to wrap
28 up. Let's go off the record.

136

1 (Brief recess)
2 MR. LERNER: We're finished. Thank you very
3 much.
4 THE WITNESS: Sure thank you.
5 MR. LERNER: -- for appearing today.
6 (Whereupon, the deposition was
7 adjourned at 2:40 p.m.)
8 --oOo--
9
10 I declare under penalty of perjury that the

11 foregoing is true and correct. Subscribed at
12 _____, California, this____ day of_____,
13 2000.
14
15
16
17

18 _____
19 ANDREW M. WEISSER
20
21
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137

1 CERTIFICATE OF REPORTER
2

3 I, CLARE MACY, a Certified Shorthand
4 Reporter, hereby certify that the witness in the
5 foregoing deposition was by me duly sworn to tell the
6 truth, the whole truth and nothing but the truth in the
7 within-entitled cause;

8 That said deposition was taken down in
9 shorthand by me, a disinterested person, at the time and
10 place therein stated, and that the testimony of the said
11 witness was thereafter reduced to typewriting, by
12 computer, under my direction and supervision;

13 I further certify that I am not of counsel or
14 attorney for either or any of the parties to the said
15 deposition, nor in any way interested in the event of
16 this cause, and that I am not related to any of the
17 parties thereto.
18

19 DATED: _____, 2000.
20
21
22

23 _____
24 CLARE MACY, CSR 5256
25
26
27
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138